

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
OFFICE OF SPILL PREVENTION & RESPONSE**

FINAL STATEMENT OF REASONS

Title 14, California Code of Regulations
Adopt Section 820.1;
Repeal Sections 820.01 and 820.02;
Amend Sections 815.01, 817.02, 817.03, 817.04, 818.02, 818.03,
819.03, 827.02, 830.6

I. Date of Initial Statement of Reasons: January 20, 2022

Date of Addendum to Initial Statement of Reasons: June 24, 2022

Date of Final Statement of Reasons: September 23, 2022

II. Update to the Initial Statement of Reasons:

The Office of Spill Prevention and Response (OSPR) has adopted regulations consolidating two similar regulations pertaining to the requirements for vessels, mobile transfer units, and marine and inland facilities to initiate and participate in drills and exercises in preparation for potential oil spills into state waters. The proposed regulations would adopt section 820.1 to Title 14, California Code of Regulations to include a merge and elimination of two existing sections (820.01 and 820.02). Additionally, OSPR made related amendments to sections 815.01, 817.02, 817.03, 817.04, 818.02, 818.03, 819.03, 827.02, and 830.6 within Title 14, California Code of Regulations.

Public Comment Periods

The initially proposed regulations were noticed for a 45-day public comment period starting February 5, 2022 and ending March 21, 2022 (California Regulatory Notice Register No. Z2022-0120-02). No public hearing was held or requested.

Following consideration of public comments received from the 45-day public comment period, OSPR determined that modifications were necessary and noticed the public with an additional 15-day public comment period starting June 25, 2022 and ending July 11, 2022.

Before the end of the 15-day comment period, the Office of Administrative Law (OAL) approved a separate rulemaking action (OAL Matter No. 2022-0525-04SR) on July 5, 2022, with an effective date of October 1, 2022. That rulemaking had revisions to a few of the same sections proposed for amendment in this drills and exercises harmonization rulemaking action. However, none of the regulation text approved on July 5, 2022 overlapped with the textual changes OSPR proposed to adopt in this drills and exercises harmonization rulemaking action. Nevertheless, OAL informed

OSPR that an additional 15-day comment period was required in this rulemaking action to notice the changes approved on July 5, 2022. Accordingly, OSPR noticed the public with an additional 15-day public comment period starting July 28, 2022 and ending August 11, 2022.

Summaries and responses to public comments received from all public comment periods are included as Attachment A to this Final Statement of Reasons.

Documents Incorporated by Reference

The following documents were incorporated by reference in the Drills and Exercises regulations, section 820.1. These documents were reasonably available to the affected public from a commonly known or specified source, made available upon request directly from OSPR, and also available on OSPR's website during all comment periods and thereafter. These documents will not be printed in the California Code of Regulations in that doing so would be cumbersome, unduly expensive, or otherwise impractical.

- Drills and Exercises Notification form DFW 1954 (Rev. 03/24/21)
- Drills and Exercises Credit Request form DFW 1955 (Rev. 11/08/21)

ICS Forms Incorporated by Reference (in numerical order):

- Incident Briefing, ICS Form 201 (U.S. Coast Guard, rev. 06/13; and U.S. Environmental Protection Agency, rev. 05/18)
- Incident Objectives, ICS Form 202 (U.S. Coast Guard, rev. 04/04; and U.S. Environmental Protection Agency, rev. 05/18)
- Incident Radio Communications Plan, ICS Form 205 (U.S. Coast Guard, rev. 09/13; and U.S. Environmental Protection Agency, rev. 05/18)
- Incident Communications Plan, ICS Form 205a (U.S. Environmental Protection Agency, rev. 05/18)
- Medical Plan, ICS Form 206 (U.S. Coast Guard, rev. 07/04; and U.S. Environmental Protection Agency, rev. 05/18)
- Incident Organization Chart, ICS Form 207 (U.S. Coast Guard, rev. 01/07)
- Hazardous Materials Site Safety and Control Plan, ICS Form 208 (U.S. Environmental Protection Agency, rev. 05/18)
- Incident Status Summary, ICS Form 209 (U.S. Coast Guard, rev. 06/05)
- Resources Request Message, ICS Form 213RR (U.S. Coast Guard, rev. 02/07; U.S. Environmental Protection Agency, rev. 05/18)
- Operational Planning Worksheet, ICS Form 215 (U.S. Coast Guard, rev. 12/02; U.S. Environmental Protection Agency, rev. 05/18)

- Incident Action Plan Safety Analysis, ICS Form 215a (U.S. Coast Guard, rev. 02/15; and U.S. Environmental Protection Agency, rev. 05/18)
- Daily Meeting Schedule, ICS Form 230 (U.S. Coast Guard, rev. 07/04; and U.S. Environmental Protection Agency, rev. 05/18)
- Resources at Risk Summary, ICS Form 232 (U.S. Coast Guard, rev. 07/04; and U.S. Environmental Protection Agency, rev. 05/18)
- Open Action Tracker, ICS Form 233 (U.S. Coast Guard, rev. 07/12)
- Work Analysis Matrix, ICS Form 234 (U.S. Coast Guard, rev. 11/12; and U.S. Environmental Protection Agency, rev. 05/18)

First 15-Day Continuation of Public Comment Period: Changes to Text of Proposed Regulation, Changes to Documents Incorporated by Reference, and Addition of Documents Relied Upon

Following consideration of public comments received from the 45-day public comment period, OSPR determined that modifications were necessary and noticed the public with a 15-day continuation notice for the period starting June 25, 2022 and ending July 11, 2022. The 15-day continuation notice was sent on June 24, 2022 to all persons in the four categories specified in subsections (a)(1) through (4) of Section 44 of Title 1 of the California Code of Regulations and Government Code section 11347.1(b).

Modifications were made to the express terms of the of the regulations, and also included a change in documents incorporated by reference, and addition of a document relied upon (Addendum to the Initial Statement of Reasons). Identification and necessity for the proposed changes for the first 15-day comment period was provided in the Addendum to the Initial Statement of Reasons dated June 24, 2022, incorporated by reference herein.

Change in Documents Incorporated by Reference (15-Day Comment Period)

The following document incorporated by reference identified in the 45-day public comment period was removed as no longer incorporated during the first 15-day comment period and noticed to the public accordingly:

- Incident Status Summary, ICS Form 209 (U.S. Coast Guard, rev. 06/05)

Change in Documents Relied Upon (15-Day Comment Period)

The following document relied upon was added to the rulemaking file and noticed for the first 15-day comment period:

- Addendum to Initial Statement of Reasons, 6/24/22

Second 15-Day Continuation of Public Comment Period: Changes to Text of Proposed Regulation

In February 2022, concurrent with this rulemaking action, OSPR noticed a separate

rulemaking action proposing changes to several sections of Title 14, California Code of Regulations, which were approved by the OAL on July 5, 2022 (OAL Matter No. 2022-0525-04SR), and that will be effective October 1, 2022. That rulemaking amended a few of the in this drills and exercises harmonization rulemaking action. None of the regulation text approved on July 5, 2022 overlapped with the textual amendments proposed in this drills and exercises harmonization rulemaking action. Nevertheless, OAL informed that an additional 15-day comment period was required to notice the public of the amendments approved on July 5, 2022.

OSPR noticed the public with a second 15-day comment period starting July 28, 2022 and ending August 11, 2022. The notice was sent on July 27, 2022 to all persons in the four categories specified in subsections (a)(1) through (4) of Section 44 of Title 1 of the California Code of Regulations and Government Code section 11347.1(b).

The changes to the regulatory text noticed for the second 15-day comment period include only those approved in OAL Matter No. 2022-0525-04SR as follows. (Note: the following does not include nonsubstantive spelling or grammatical revisions.)

Section 817.02 - Marine Facility Oil Spill Contingency Plan Content

- Subsection (c)(3)(B)4. – updates the cross-reference pertaining to the process of designating information in a document submitted to OSPR as confidential.

Section 817.04 - Inland Facility Oil Spill Contingency Plans

- Subsection (c)(2)(B) – updates the cross-reference pertaining to the process to request reconsideration of a decision made by OSPR.
- Subsections (e)(5)(A) through (E) – updates the cross-reference pertaining to the process of designating information in a document submitted to OSPR as confidential, and deletes text redundant to that which was moved to and adopted in section 790.3 of chapter 1.
- Subsections (f)(4)(A) through (C) – updates the cross-reference pertaining to the process to request reconsideration and hearing of a decision made by OSPR, and deletes text redundant to that which was moved to and adopted in section 790.5 of chapter 1.
- Subsection (u)(7) – updates the cross-reference pertaining to the process to request reconsideration of a decision made by OSPR.
- Subsection (w) – deletes the severability provision as redundant to that which was moved to and adopted in section 790.1 of chapter 1.
- Authority cited – updates the identifying statutes providing rulemaking authority for the severability provision [subsection (w)].

Section 820.01 – Drills and Exercises

- Subsection (j) – updates the cross-reference pertaining to the process to request reconsideration and/or hearing of a decision made by OSPR and

deletes text redundant to that which was moved to and adopted in section 790.5 of chapter 1. All text is then deleted consistent with the intent to repeal the entirety of section 820.01 for harmonization with new section 820.1.

- Subsection (k)(3)(D) – updates the cross-reference pertaining to the process of designating information in a document submitted to OSPR as confidential and deletes text redundant to that which was moved to and adopted in section 790.3 of chapter 1. All text is then deleted consistent with the intent to repeal the entirety of section 820.01 for harmonization with new section 820.1.

Section 820.02 – Drills and Exercises

- Subsection (l) – updates the cross-reference pertaining to the process to request reconsideration of a decision made by OSPR and deletes text redundant to that which was moved to and adopted in section 790.5 of chapter 1. All text is then deleted consistent with the intent to repeal the entirety of section 820.02 for harmonization with new section 820.1.

Non-Substantive Changes Made to Text of Proposed Regulations After Close of Second 15-Day Continuation of Public Comment Period

Minor editorial changes were made to simplify and add clarity to the regulations. These changes are considered changes without regulatory effect because they do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

- Added language to make clearer the intent of the regulation which is that it is the drill coordinator that makes the request to witness the notifications being made. [820.1(c)(1), (d)(1), (e)(1), (f)(1)]
- Added “for” and “approval” to make clear the document may be approved by either the incident commander or Unified Command if the latter is present. [820.1(e)(5)]
- Added language to make clearer the intent of the regulation which is that once the facility makes notifications to the qualified individual and the rated oil spill response organization, it is the facility that is not prohibited from making further notifications. [830.1(g)(1)]

III. Reasonable Alternatives to the Proposed Regulatory Action and Reasons for Rejecting Those Alternatives:

In accordance with Government Code section 11346.9(a)(4), as discussed in the summary and response to comments provided in Attachment A, OSPR has determined that no reasonable alternative considered would be more effective in carrying out the purpose for which this regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation, or would be more cost-effective to affected private persons, or equally effective in implementing the statutory policy or law.

This rulemaking serves to streamline, remove subjectivity and vagueness, provide clarity, standardize language and consistency, and integrate lessons learned from evaluating drills and exercises in both the marine and inland environments. OSPR has considered the differences in oil spill response requirements between marine and inland environments and those differences have been accounted for in these regulations. These regulations also allow marine and inland plan holders to be held to the same standards.

This rulemaking also serves to make it easier for the public to locate and navigate the regulations, and to reduce and redesign required forms to increase efficiency and clarity.

The proposed regulations implement, interpret, and make specific Government Code sections 8670.7, 8670.10, 8670.28, 8670.29, and 8670.31. The proposed regulations are necessary to provide specificity not found in the statutes.

IV. Local Agency or School District Mandate Determination:

The proposed regulations do not impose any mandate on local agencies or school districts.

V. Small Business Impact:

No alternatives were proposed that would lessen any adverse economic impact on small businesses.

ATTACHMENT A

Consideration of Public Comments

The Office of Spill Prevention and Response (OSPR) thanks all those who provided feedback and submitted comments during the rulemaking process.

The following provides a summary of the comments received from three public comment periods and OSPR's responses to same. The first comment period (45-day) was held from February 5, 2022 through March 21, 2022. The second comment period (first 15-day) was held from June 25, 2022 through July 11, 2022. The third comment period (second 15-day) was held from July 28, 2022 through August 11, 2022. No comments were received during the third comment period. Nor were any comments received from any comment period on the two proposed new forms – Drills and Exercises Notification (DFW form 1954), and the Drills and Exercises Credit Request (DFW form 1955).

The following summaries and responses are organized by the subsection the commenter identified. Where the section or subsection is unspecified by the commenter, OSPR made every effort to catalog the comment where OSPR felt it most applied. Comments from multiple commenters on the same subsection or topic are consolidated and summarized. Comments to other associated rulemaking documents, general non-specific comments, and irrelevant and untimely comments are aggregated in separate tables at the end of each comment period.

A list is provided of the people or organizations who submitted written comments. Each is assigned a numerical identifier. At the end of each comment is the assigned numerical identifier and a letter corresponding to the letter marked (by OSPR) on the copies of the written comment letters.

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I. List of Commenters

The following provided written comments during the 45-day comment period (February 5, 2022 through March 21, 2022).

Identifier	Commenter
1	California Resources Corporation (CRC), letter 2/18/22
2	Marine Spill Response Corporation (MSRC), email 3/10/22
3	Western States Petroleum Association (WSPA), letter 3/21/22
4	BNSF Railway Company (BNSF), letter 3/21/22
5	Amergent Techs, letter 3/21/22

The following provided written comments during the first 15-day comment period (June 25, 2022 through July 11, 2022).

Identifier	Commenter
6	California Resources Corporation (CRC), letter 6/29/22
7	ECM Maritime Services (ECM), email 7/6/22

No comments were received during the second 15-day comment period (July 28, 2022 through August 11, 2022).

II. Comments

Public comments received are summarized and responded to below.

List of Acronyms Used

CalOES	California Office of Emergency Services
CalOSHA	California Occupational Health and Safety Administration
FEMA	Federal Emergency Management Agency
AMPD	Average Most Probable Discharge
HAZWOPER	Hazardous Waste Operations and Emergency Response
IAP	Incident Action Plan
ICS	Incident Command System
IMH	Incident Management Handbook
NRC	National Response Center
OSPR	Office of Spill Prevention and Response
OSRO	Oil Spill Response Organization
SED	Semi-Annual Equipment Deployment Drill
TTX	Tabletop Exercise
UC	Unified Command

First Comment Period

The following consists of comments received from the 45-day comment period, February 5, 2022 through March 21, 2022

Section 820.1 – Drills and Exercises – Facilities, Vessels, and Mobile Transfer Units

Subsection (a)(4)

- Commenter suggests the following language change due to ambiguity and an insufficient boundary definition: *“The Administrator may determine that a different tier is more appropriate for a particular facility based on, but not limited to, ~~the following: a change in the facility’s reasonable worst-case spill volume, spill and response history, threat to sensitive sites, or public safety concerns (e.g., proximity to a residential area).~~”* [Commenter 3j]

OSPR Response: What is perceived as ambiguity is done intentionally to encompass the high diversity of plan holders OSPR regulates (including the type and volume of products they work with), environments, and populations that exist throughout the state while maintaining the ability to ensure protections for California’s public and natural resources. Considering this diversity, it is not appropriate to develop specific boundaries for the instances mentioned here due to the number of variables that exist, those variables having dynamic impact, and having myriad products of varying volumes being impacted by those variables. For example, 100 barrels of crude being spilled in the Central Valley with ephemeral waterways and limited population has a very different environmental and public safety impact than 100 barrels of crude being spilled off the coast of Orange County or 1,000 barrels of diesel being spilled in Carquinez Strait near San Pablo Bay. No change will be made to the originally proposed regulations.

Subsection (a)(5)

- Commenter recommends adding the following language at the end of this section: *“In addition to the requirements contained in this section, the Administrator may require an additional drill or exercise to validate the oil spill contingency plan. This drill or exercise may be announced or unannounced and may be called due, but not limited, to one or more unsuccessful mandatory objective(s), new resources, or changed resources.”*
[Commenter 3k]

OSPR Response: OSPR has considered this comment; the suggested verbiage is already in the text so no change will be made to the originally proposed regulations.

- This gives OSPR sweeping authority to mandate announced and unannounced exercises anytime they deem it required. This places undue hardship on the ability of operators to maintain operations, and compliance with limited resources. And, theoretically, a company could have multiple exercises in a given year, at the desire of CA OSPR and places a hardship on companies especially with limited resources.
[Commenter 5a.1; 5a.2]

OSPR Response: OSPR is authorized to conduct announced and unannounced drills of contingency plans. (Gov. C. § 8670.10(a)(1)) The second sentence of (a)(5) provides clarity of the types of situations where this authority could be exercised. No change will be made to the originally proposed regulations.

Subsection (a)(6)(A)

- “CalTriVEX” should be its own paragraph. [Commenter 2a]

OSPR Response: This subsection is intended to be its own paragraph; it was a formatting error; the 45-day text does not accurately illustrate this. This correction will be made and noticed to the public for a 15-day comment period.

Subsection (b)(1)(A)

- Regional Response Plans. Commenter requests clarification of the additional regulatory language requiring response plans that include “regions” to exercise in every region over a 3-year period. It is not clear if the objectives of requirement can be collectively met over the 3-year period for one plan number or does this mean all objectives must be met in each region? [Commenter 3c]

OSPR Response: Nothing in these proposed regulations indicates all objectives must be tested and achieved in each region every year for facility plan holders operating in more than one region. As stated in subsection (b)(1), plan holders are required to hold an annual tabletop exercise. Per subsection (b)(1)(A), that facility annual exercise must alternate between regions if a plan holder operates in more than one region. Since subsections (c), (d), and (e) describe which objectives must be tested and achieved during the annual exercise, facility plan holders operating in multiple regions will need to test and achieve those objectives during annual tabletop exercises that alternate between regions. No change will be made to the originally proposed regulations.

Subsection (b)(3)(A)

- OSPR's end goal of the requirement for making quarterly calls to NRC, CA-OES and the OSRO. We struggle to understand how making quarterly notifications would have changed the outcome of any of the plan holders that have failed to make the notifications in the prescribed time allotted. [Commenter 3e]

OSPR Response: Making notifications quarterly is currently a requirement of all plan holders [14 CCR § 820.01(a)(1)(B) for marine facilities, 820.01(a)(2)(B) for tank and nontank vessels, 820.01(a)(3)(B) for small marine fueling facilities, mobile transfer units, and vessels carrying oil as secondary cargo, 820.02(b)(1)(B) for tier I inland facilities, 820.02(b)(2)(B) for tier II inland facilities, and 820.02(b)(3)(B) for tier III inland facilities]. In OSPR's observations of exercise and spill notifications, many failures occur due to plan holder staff lacking knowledge of the spill reporting notifications identified in their oil spill contingency plan. By continuing to require spill notification procedures be performed quarterly, plan holder staff will maintain their practice of those procedures to be prepared to perform those notifications during drills, exercises, and actual spills. No change will be made to the originally proposed regulations.

- It is not clear as to who is required to be notified under this requirement. Further, if the definitions for notifications are followed, the language indicates use of ICS Form 201 for agency notifications. WSPA requests clarification of the intent of this proposed language. [Commenter 3f]

OSPR Response: Expectations for quarterly notification recipients are described in subsection (g)(1) and a reference will be added to subsection (b)(3)(A). This revision will be noticed to the public for a 15-day comment period. Quarterly notifications intentionally do not specify the type of documentation in subsection (g)(1) that is required to receive credit. OSPR will certainly accept documentation on an ICS Form 201, but any type of documentation supporting notifications were made will be accepted. No change will be made to the originally proposed regulations with regard to the latter part of this comment.

- The requirement that quarterly notifications must occur in each region every quarter places an undue hardship on tracking up to 12 QI notification drills (considering the exception when there is credit received from annual drills and achieved notifications in that region). How is this verified and validated by OSPR to ensure tracking doesn't become a hardship where annual exercises may or may not grant credit especially if plan holders fail? This means they would fail twice. Typically, credit granted letters are not mailed out until 180 days post credit request is submitted, which is at least two quarters after a QI notification is granted. This delay could punish plan holders twice. [Commenter 5c]

OSPR Response: The current quarterly notification requirement is for each facility to perform those notifications quarterly, not each region. OSPR has calculated that updating the quarterly notification requirement from each facility to each region will reduce the number of notifications by 368 sets annually for inland plan holders and 1,236 sets annually for marine plan holders, which will decrease plan holders' time commitment. As described in subsection (l)(1)(C), a DFW 1955 is not required for quarterly notifications; plan holders are

expected to maintain documentation for those notifications and provide it to OSPR upon request. Since the time frames described for drill coordinators to process a DFW 1955 does not apply to quarterly notifications, a separate time frame will be added. This revision will be noticed to the public for a 15-day comment period.

- Note by OSPR: Multiple comments received with regard to telephonic communication are cataloged in the General Comments section beginning on page 42 below.

Subsection (b)(5)

- Plan holder and OSRO (through plan holder) would be required to obtain Section 11 consultation approval. This process has been proven to be difficult if not impossible in most locations, hence the development of the OSPR Sensitive Site Evaluation Program (required for OSRO's with shoreline protection ratings). This requires Section 7 consultation approval which has been achieved multiple times by the OSPR Environmental Scientist Team. Consider adding "pursuant to subsection 819.04(D) of this chapter" to avoid confusion. [Commenter 2b]
- How are plan holders responsible for drilling response strategies for sensitive sites where the OSPR drills and Exercises unit is not responsible for overseeing this. Who oversees this requirement if OSPR is mandating here? [Commenter 5d]

OSPR Response: This subsection is just pointing out there may be other requirements for plan holders and does not have any specific requirements. Subsection (b)(5) applies to plan holders and does not apply to OSRO ratings. Section 819.04 pertains specifically to OSROs and does not apply to plan holders, so it will not be referenced here. Information about how plan holders can comply with shoreline protection requirements already exist and are described in the Shoreline Protection Tables as referenced in subsection (b)(5). No change will be made to the originally proposed regulations.

Subsections (c), (d), (e)

- Inclusion of the successful completion of Notification and Mobilization Objectives in every exercise is overly burdensome and significantly extends the required time necessary to complete the drill thus reducing the focus on other equally important action objectives. These requirements also fragment drill play where 'Stem of the Planning P' objectives are not anticipated to be exercised. This requirement should be removed from the regulations. [Commenter 4c.1]
- If OSPR decides plan holders do not meet this credit it nullifies all objectives 3-10 plan holders could have accomplished. This also creates excess drills and exercises for OSPR coordinator and plan holders. [Commenter 5e.1; 5e.3; 5e.4]

OSPR Response: The successful completion of the Notifications objective is necessary to address ongoing issues with plan holders not achieving this objective and not acting on OSPR's feedback for improvement. This requirement does not mean that every annual exercise must begin with notifications and then move through the initial response phase of the Planning P. After notifications, the exercise can move to any point in the Planning P per the exercise design. Therefore, the amount of time meeting these objectives would be minimal and would only occur if the exercise is not an initial response exercise.

The successful completion of the Staff Mobilization objective is necessary to address ongoing issues with the oil spill contingency plan not being utilized during exercises. Utilizing the oil spill contingency plan during exercises has been in regulations for many years, as has notifying and assembling the spill management team (pre-spill management team certification regulations). The requirements in this objective were updated to be consistent with recently adopted spill management team regulations (sections 830.1 – 830.11) and to address these issues.

Not achieving one or both of these objectives will not nullify other objectives being tested during an exercise. Not achieving objectives (1) and (2) will only nullify objective credit if substitution credit is being sought, pursuant to subsection (m). The proceedings described in subsection (l)(3) will result since a mandatory objective would not have been successfully achieved.

No change will be made to the originally proposed regulations in response to these comments.

Subsection (c)(1)

- Requiring notifications as a mandatory annual exercise objective (that if failed) plan holders will not earn 2-10 credit items places an undue hardship on plan holders and OSPR by creating excessive and wasteful drills and exercises and oversight. [Commenter 5e.2]

OSPR Response: Per 820.1(c), "...objective described in (1) and (2) in this subsection must be successfully achieved at every exercise...", which makes them mandatory objectives. Per 820.1(l)(3), "If one or more mandatory objectives were not successfully achieved, a partial credit approval letter and after action report...will be issued." Therefore, if the Notifications objective is not achieved, then a mandatory objective was not successful and the proceedings in 820.1(l)(3) would occur. Any other objectives achieved during the original exercise will still earn credit. No change will be made to the originally proposed regulations.

Subsections (c)(1), (d)(1), (e)(1), (f)(1)

- Commenter proposes modification to reflect the sequence of notifications is to be initiated within 30 minutes of the scenario being briefed. Expectation to fulfill 4 required notifications within 30 minutes is unrealistic, specifically to CalOES and NRC. Starting the notifications no later than 30 minutes after the drill scenario is briefed demonstrates the operator's intent to meet the regulatory requirements and provides for a realistic information delivery format. [Commenter 1a]
- Commenter is concerned that the following requirement [(c)(1)] could have an overwhelming impact on the National Response Center (NRC) and Governor's Office of Emergency Services (OES) and may have a negative impact on actual response efforts. WSPA urges OSPR staff to reconsider this regulatory language. [Commenter 3m]
- This mandate creates undue hardship on companies abilities to make all required notifications, especially where limited personnel apply. [Commenter 5g.1; 5g.2; 5g.3; 5g.4]

OSPR Response: Regarding “sequence”, the sequence or order of those notifications is not dictated by these regulations, it is dictated by the plan holder’s oil spill contingency plan pursuant to OSPR’s contingency plan regulations. The 30-minute time frame has been in regulations for many years (14 CCR § 817.02(g) for marine facility plans, 817.03(g) for small marine fueling facility plans, 818.02(h) for tank vessel plans, 818.03(h) for vessels carrying oil as secondary cargo plans, 817.04(g) for inland facility plans, and 827.02(d) for nontank vessel plans). Regarding “initiated”, the verbiage in these regulations already requires the notifications to be initiated within 30 minutes, so the notifications requirement already makes allowances for hold times and answering questions that are not within the plan holders’ control.

Regarding impact to NRC and OES, there are already a number of plan holders that make notifications during most, if not all, of their annual exercises (e.g., inland tier III plan holders are currently required to achieve Notifications during every exercise). If NRC or OES are too busy to take a full report and provide a control number, that would not negatively impact the plan holder nor the actual response effort by NRC or OES.

Regarding plan holder hardship, there are a number of plan holders with one person making notifications and they are able to achieve the Notifications objective within the stated time limit. If a single person can achieve this objective, then there is not a situation where an annual tabletop exercise would be held where there is not sufficient staff available to achieve this objective.

No change will be made to the originally proposed regulations.

- Under Federal Law, NRC notifications are "immediate" or "as soon as possible". Where the law allows, the more conservative law applies - as it pertains to the National Response Center Notifications, this mandated time frame would supersede Federal Law in a more lenient manner than that which is currently written. In some instances, immediate and as soon as possible may have been interpreted as 15 minutes. The state should do due diligence here to ensure the State is not superseding Federal Law where Federal Law is applied in a stricter manner. [Commenter 5f.1; 5f.2; 5f.3; 5f.4]

OSPR Response: The 30-minute time frame for starting calls has been in regulations for many years [14 CCR § 817.02(g) for marine facility plans, 817.03(g) for small marine fueling facility plans, 818.02(h) for tank vessel plans, 818.03(h) for vessels carrying oil as secondary cargo plans, 817.04(g) for inland facility plans, and 827.02(d) for nontank vessel plans]. This is not in conflict with federal law since plan holders can perform the notifications immediately (within 15 minutes) and still be in compliance with the requirements described in the Notifications objective. No change will be made to the originally proposed regulations.

- Commenter requests clarification as to whether or not the drill coordinator will need to witness certain notifications prior to the exercise. The prescriptive nature of the requirement that drill coordinators be present to witness a range of exercise functions raises questions as to OSPR staffing resources, and whether sufficient coordinators will be available to witness all the mandated activities. Commenter suggests eliminating this requirement, especially given reality that multiple drills could be occurring simultaneously. [Commenter 3g.1; 3g.2]

- The requirement that the Notification Objective is “witnessed by a drill coordinator upon request” is unclear as to under what circumstances this request may occur. If the drill coordinator makes this request after notifications have already begun, will these notifications have to be repeated? This also adds to the expense and the time frame of the drill or exercise. This requirement should be removed from the regulations.
[Commenter 4e]

OSPR Response: Evaluation is an essential duty for drill coordinators, which requires them to observe myriad aspects of a drill or exercise to determine if regulatory requirements have been met. Evaluation cannot be performed when a task is not observed and documentation is incomplete, inconsistent, or inaccessible. Having the drill coordinators be able to observe notifications, as well as other exercise functions that have been specifically stated in these regulations, is necessary to address ongoing issues with drill documentation being incomplete, inconsistent, and/or inaccessible as well as plan holders denying drill coordinators access to observe notifications, even when it is explicitly requested in advance of the drill or exercise.

There is a possibility that multiple exercises are held concurrently, but this eventuality is already planned for in these regulations. OSPR has several drill coordinators located throughout the state, and the requirements described in subsection (i) allow for a drill coordinator to be present to observe and evaluate every in-state drill and exercise.

Due to the widespread and chronic issues with plan holders not meeting the current notifications requirements and having documentation that is insufficient to confirm the requirements were met, drill coordinators have asked to observe the notifications being made. These requests have been made during both exercise planning and prior to exercise start; it is not uncommon for plan holders to disallow access or complete notifications prior to a coordinator being present without their advanced knowledge. This requirement is necessary to address these ongoing issues, allow coordinators to perform their evaluation, and ensure plan holders are achieving the Notifications objective. As these notifications occur at a scheduled time, decided upon during the exercise design, having a coordinator present will not increase the time frame or expense of the drill or exercise. No change will be made to the originally proposed regulations.

Subsections (c)(1), (c)(2), (c)(4.1)

- Commenter makes the following suggestion: “...on page two of the ICS 201” could be better stated as “...on ~~page two of the ICS 201-2~~” [Commenter 3n.1; 3n.2; 3n.3]

OSPR Response: The form number is ICS 201. Page two of the ICS 201 is not identified as “ICS 201-2”; that would imply a different form altogether, which does not exist. No change will be made to the originally proposed regulations.

Subsections (c)(2), (d)(2), (e)(2)

- Note by OSPR: Multiple comments received with regard to telephonic communication are cataloged in the General Comments section beginning on page 42 below.

Subsections (c)(3), (d)(3), (e)(3)

- Commenter is concerned with the potential of an iterative exchange with the agency, depending upon the interpretation of the rather subjective term “accurately document.” Commenter requests that OSPR reconsider the use of the term “accurately document”. [Commenter 3p]
- By requiring all information to be accurate (since humans are imperfect) this is setting up plan holders to fail since names can be misspelled, and any number of personnel could potentially be left off an ICS 207 form. ICS 207 forms are not able to contain over 100+ personnel where OSPR is requiring ALL agencies and contractors be identified. What if there isn’t enough space to document? Reconsider use of the word “all”. [Commenter 5i.1; 5i.2; 5i.3]

OSPR Response: Drill coordinators have been seeing an increase in the inaccuracies portrayed in organization charts, including those utilized during actual spills. It is not OSPR’s intent to check the accuracy of minutiae such as spell-checking participants’ names or confirming the Supply Unit Leader’s name, as these ongoing issues are on a much larger scale. Examples of these issues are: Unified Command has been established, both federal and state agencies have staff participating, but only plan holder staff are listed on the organization chart; OSPR has staff filling specific ICS positions such as Environmental Unit Leader or Volunteer Coordinator, but they’re documented as being Agency Representatives reporting to the Liaison Officer; or an organization chart from a previous exercise is utilized with some of the same staff, but the positions they’re filling are incorrect.

The information contained on page three of the ICS 201 or the ICS 207, along with the sign-in sheet, is used for accountability, communication, and safety. For example, if there’s an earthquake or other environmental emergency, the organization chart could be used to identify section chiefs to aid in accounting for the safe evacuation of all staff notated on the sign-in sheet.

Drill coordinators have been prompting for corrections to be made so accurate organization charts are disseminated to all response personnel, but it is common for prompts to not be acted on and the current regulations do not require these charts be accurate. Organization charts misrepresenting the current organization structure have recently been seen during actual spill response. It is necessary to require accuracy to address these ongoing issues, ensure plan holder staff understand the Unified Command structure, and agency staff are properly represented. No change will be made to the originally proposed regulations.

Subsections (c)(3), (c)(8.1)

- Commenter suggests that “...either page three of the ICS 201” in this section could be better stated as “...either ~~page three of the~~ ICS 201-3”. [Commenter 3q.1; 3q.2]

OSPR Response: OSPR Response: The form number is ICS 201. Page three of the ICS 201 is not identified as “ICS 201-3”; that would imply a different form altogether, which does not exist. No change will be made to the originally proposed regulations.

Subsections (c)(3), (c)(8), etc.

- Note by OSPR: Multiple comments received with regard to the Incident Management Handbook (IMH) are cataloged in the General Comments section beginning on page 42 below.

Subsection (c)(3.1)

- Many of these need to be prefaced with something like “If applicable to the scope of the exercise.” [Commenter 4g]

OSPR Response: The requirements within each objective must be met to successfully achieve the objective. Other than Notifications and Staff Mobilization, every objective must be met at least once during any three-year period. One or more of these objectives may not be applicable to the scope of an exercise based on its design, but if that is the case then credit cannot be earned for those objectives, must be incorporated into the scope of an exercise, and earned another year within three years to be in compliance. If there are requirements that may not apply to all plan holders, “when applicable” is already included in the text so plan holders are not held responsible for requirements that do not apply to them. No change will be made to the originally proposed regulations.

Subsections (c)(3.1), (d)(3.1)

- Plan holders should not be liable for Federal and State not showing up to their exercises. OSPR is allowing Local participation to have this exception but not Federal and Local. Federal agencies should not be mandated at plan holder exercises where operational commitments pull them away to higher priority tasks. [Commenter 5j.1; 5j.2]

OSPR Response: The Unified Command objective language has been in regulations for many years: 14 CCR § 820.01(e)(4) for marine facilities, tank vessels, and nontank vessels, 820.01(f)(4) for small marine fueling facilities, mobile transfer units, and vessels carrying oil as secondary cargo, and 820.02(f)(3.1) and (g)(3.1) for inland facilities. Credit has not and will not be withheld for an agency’s inability to participate during an exercise; but that does not mean agencies don’t need to be invited and lack of agency participation does not and will not remove the other requirements described in this objective. No change will be made to the originally proposed regulations.

Subsection (c)(4)

- The proposed requirement appears to create a prospective conflict with federal regulations which do not require automatic submission of the ICS Form 208. The Unified Command would likely not accept the document if it was not specifically requested. Commenter suggests revising the language to note that the document should be available, if requested by the UC. If OSPR wants the document included as part of a drill, it will have to make the request to the UC through the SOSC to include it as part of the response plan requirements. [Commenter 3r]

OSPR Response: Per the USCG and EPA IMHs, defined at 14 CCR 790(i)(3), (page 6-8 and chapter 7, respectively) the Safety Officer must develop measures to ensure personnel safety, including ensuring creation of an incident Health and Safety Plan. ICS Form 208

accomplishes this task and assists with meeting the site safety requirements of 29 CFR § 1910.120(b)(4)(i) and the state analogue of 8 CCR § 5192(b)(4)(A). Requiring UC approval of the ICS Form 208 is in response to plan holders not providing participating agencies a chance to review and provide feedback on the Health and Safety Plan, which is necessary to ensure the health and safety of all response personnel is considered and accounted for. Since safety is always the first priority, it is not unreasonable to have those plan holders with the highest of reasonable worst-case spill volumes to be held responsible for ensuring participating agencies are provided the opportunity to review and provide feedback to the Health and Safety Plan. No change will be made to the originally proposed regulations.

Subsection (c)(4)

- Site Safety Plans should be compliant with OSHA mandated HAZWOPER regulations and theoretically cover safety for the entire response, whereas the role of the ICS 208 form should be for individual field operations of like and kind (Air, Sea, land, etc.). ICS 208's theoretically should accompany each ICS 204 generated during a response so that the operations section understands the hazards and mitigations for that operation. The ICS 208 is a subset of the Site Safety Plan. Requiring use of the EPA 208 is ease of use. However, it comes with its own pitfalls and cons - shorter is not necessarily better in safety and there shouldn't be a specific version required for exercises, since OSHA is the regulating agency overseeing safety at responses, as well as US Coast Guard. The USCG ICS 208, when fully completed, complies with OSHA requirements - whereas the EPA version does not. [Commenter 5k]

OSPR Response: OSPR has considered this comment, but the ICS Form 208 is not considered to be the complete Health and Safety Plan, it is meant to be incorporated into the response's overall Health and Safety Plan to provide consistency of information for response personnel. By utilizing a consistent form, response personnel can easily locate pertinent information while simultaneously allowing for maximum flexibility in the other contents of the Health and Safety Plan. This is reflected in the original proposed regulations, "generate a site safety plan, to include the applicable safety data sheet and an ICS Form 208...". It is the responsibility of every participating organization and agency to comply with HAZWOPER regulations, which is why it is so important to ensure Unified Command, comprised of organization and agency leaders, is able to review the safety plan. Requiring the EPA version of the ICS 208 to be utilized as a single component of a comprehensive safety plan allows plan holders flexibility in the safety plan generated during the exercise while simultaneously allowing responders easy access to pertinent safety information regardless of the plan's composition. No change will be made to the originally proposed regulations.

- Commenter suggests the following language revision: "*Designate a Safety Officer to conduct a safety briefing to responders at the incident command post and monitor their health and safety.*" Rationale for the suggested change is that the responders may be at the incident site and not the command post, which could be located miles away. Proposed change creates flexibility to provide responder briefings irrespective of their location. [Commenter 3s]

OSPR Response: Since these tabletop exercises do not include a field component, specifying the responders at the incident command post is meant to ensure that the individuals participating in the exercise receive a safety brief applicable to the exercise location. Safety for the responders at the incident site should also be a consideration during the exercise, but since there is no field component there is no physical action that can be taken to evaluate for plan holders to comply with; any incorporation of field responders would be a hypothetical and therefore simulated and not available for OSPR to evaluate. No change will be made to the originally proposed regulations.

- This isn't possible if the drill's scope ends before a UC meeting. [Commenter 4h referencing requirement to secure UC approval of ICS-208.]

OSPR Response: The requirements within each objective must be met to successfully achieve the objective. Other than Notifications and Staff Mobilization, every objective must be met at least once during any three-year period. One or more of these objectives may not be applicable to the scope of an exercise, but if that is the case then credit cannot be earned for those objectives, must be incorporated into the scope of an exercise, and earned another year within three years to be in compliance. No change will be made to the originally proposed regulations.

Subsection (c)(4.1)

- Requiring mandatory additional telephonic notifications [referring to notification to the local Certified Unified Program Agency] creates additional undue hardships on planholders during exercises where there is pressure to complete all the additional tasks required by this new chapter of regulations. [Commenter 5f]

OSPR Response: Other than Notifications and Staff Mobilization, every objective must be met at least once during any three-year period. Performing one additional notification to the Certified Unified Program Agency, an agency that protects Californians from hazardous waste and hazardous materials within its jurisdiction, at least once during any three-year period is not an undue hardship for plan holders. No change will be made to the originally proposed regulations.

Subsections (c)(4.1), (d)(4.1), (e)(4.1)

- Commenter inquiring what information is required to be documented, referring to the last sentence in this subsection. Who identifies these agencies? Who is required to document this? and where are they supposed to document this information (FORM)? [Commenter 5m.1; 5m.2; 5m.3]

OSPR Response: Since the requirement is to "identify and document" the public health agencies, simply writing down the name of the agency would earn credit. Obtaining and documenting additional information, such as a phone number, is encouraged but not required.

Any requirements described in this section are the plan holders' responsibility to achieve, therefore a member of plan holder staff is responsible for identifying these agencies. Since no position or documentation is specified in the objective, any member of plan holder staff can identify and document the public health agencies in whatever format they choose, as

long as documentation is maintained and submitted to the Administrator pursuant to the proposed regulations. No change will be made to the originally proposed regulations.

Subsection (c)(5)

- Commenter requests clarification as to: (1) the need for media products to be approved by UC to receive credit, (2) whether or not templates will be provided, and (3) whether or not templates if provided will be required to be used or will they serve as guidelines for expectations. [Commenter 3t]

OSPR Response: Per the proposed regulations, UC approval is not required for credit; rather “for Unified Command approval” denotes the media products are being generated for a Unified Command and not just the Responsible Party Incident Commander. This addresses ongoing issues with plan holders either bypassing Unified Command or only presenting media products to the Responsible Party Incident Commander.

As with every other requirement described in these regulations, it is the responsibility of the plan holder to achieve. Since no template has been described in these regulations, no template will be provided, and no template is specifically required. The generation of these products and interfacing with Unified Command requires knowledge of the Public Information Officer’s roles and responsibilities within the incident command system. The media products eligible to receive credit are integral to most oil spill responses and were specifically chosen to address ongoing issues with plan holder staff not understanding the types and time frames of media products. This is meant to ensure that plan holder staff are held accountable for understanding the roles and responsibilities of a Public Information Officer. No change will be made to the originally proposed regulations.

- Commenter suggests the following language revision: “Designate a Public Information Officer to interface between Unified Command, the media, and the public. Develop a holding statement or initial press release and at least two additional written media communication products for Unified Command approval. Eligible additional written communication ~~media~~ products include but are not limited to ~~are~~ updated press release, press conference talking points for all Unified Command members, fact sheet including updates from initial press release or a public web page containing incident facts/information.” [Commenter 3u]

OSPR Response: The terminology for written media products has been in regulations for many years [14 CCR § 820.01(e)(5), 820.01(f)(5), 820.02(f)(5), 820.02(g)(5), and 820.02(h)(5)] and is one that is utilized by the IMH [p. 6-3]. The term communication does not accurately represent the products required by this objective and is a term usually reserved for communication plans (ICS 205 or ICS 205a) that specifically include contact information for active response personnel.

The media products listed in the objective that are eligible for credit were identified during consultation with a Public Information Officer Subject Matter Expert. They require plan holder staff to think critically about the events occurring during the exercise when developing the product rather than heavily relying on a pre-populated template to develop. Other media products will not be considered for credit since comparable work is not done to

generate those products.

Generating a web page to disseminate public information is not something that all plan holder staff are capable of developing upon short notice and, during an actual spill, would rely on OSPR's CalSpillWatch web page. Since this objective contains requirements that OSPR expects plan holder staff to accomplish, a web site will not be included here; although a plan holder may certainly develop a public web page during an exercise if they choose to do so.

No change will be made to the originally proposed regulations.

Subsection (c)(6)

- *Commenter suggests the following language revision: "Designate staff to work with the natural resource trustee agency Liaison Officer and use relevant area contingency plans, geographic response plans, and the oil spill contingency plan to identify, document, and initiate simulated contact with relevant stakeholders. Stakeholders include, but are not limited to, first responders, local government officials, natural resource trustees, and tribal representatives. Identify and document additional stakeholders (e.g., elected officials, communities, neighbors, businesses, and other potentially impacted public). Develop a one- to two-page stakeholder engagement plan for all identified stakeholders to assess their needs and available resources, keep them informed as needed."*
[Commenter 3v]

OSPR Response: Calls to stakeholders need to be performed to test the contact information identified in the relevant plans listed in this objective. This is how incorrect contact information is identified and remedied during exercises to inform an actual spill.

OSPR agrees with the addition of communities and businesses. This addition will be made and noticed to the public for a 15-day comment period.

OSPR will not be identifying a specific type of stakeholder documentation due to the variety of documentation currently utilized by plan holders, there is no ICS form exists to fulfill this requirement as with other objectives, and there is no precedence for what this document entails as with the media products required by the Public Information Officer objective. Additionally, the most pressing issue being addressed by these regulations is the lack of identification and contact of stakeholders, so however plan holders choose to implement this during their work with the natural resource trustee Liaison Officer will be accepted.

The proposed addition of "as needed" will not be implemented because it is open-ended and does not allow for specific requirements to be identified and achieved during any given exercise.

No further changes will be made to the originally proposed regulations.

Subsection (c)(6)

- *Commenter requests clarification as to what natural resource trustee agency for non-state or industry PIO's. [Commenter 3w]*

OSPR Response: OSPR does not understand what the commenter is requesting

clarification on, but if the comment is asking what natural resource trustee agency would be filling the Liaison Officer position, it could be any natural resource trustee agency. For example, as defined by CEQA: CDFW, SLC, State Parks, UC of CA (14 CCR § 15386). However, this position will generally be filled by OSPR during tabletop exercises held for compliance with OSPR's regulations.

Subsection (c)(7)

- This section states: *“This information must be updated on the ICS 201 and relevant maps.”* WSPA suggested that this language be removed from the regulations due to tactical resources being tracked within the Resource Unit instead of the 201. Alternatively, the proposed language could be modified to read *“This information must be tracked as applicable through updating the ICS 201 and relevant maps, and/or through Resource and Situation Units.”* [Commenter 3x]

OSPR Response: The list of tactical resources will eventually outgrow the ability of the ICS 201 to track, but until that time all tactical resources are accounted for and tracked using the ICS 201. The responsibility for updating the resources and relevant maps varies across exercises depending on the positions that are staffed, so it is not realistic to specify the positions responsible for updating the 201 and relevant maps here. No change will be made to the originally proposed regulations.

- Regulated parties use web-based forms in the third party software which closely align with ICS Form 234 and ICS Form 215 but not exactly these forms. Commenter suggests that *“or similar”* be added to the regulatory language in this section and throughout the regulation where specific forms are called out. [Commenter 3y]

OSPR Response: The current documentation requirements allow for ICS form equivalents, but this lack of standardization has resulted in myriad versions of the ICS forms. This defeats the purpose of ICS, which is for everyone involved in an exercise or actual spill, regardless of affiliation, to speak the same organizational language. This miscommunication leads to delays in the response of both exercises and actual spills, which is the issue being addressed by requiring specific versions of the ICS forms. No change will be made to the originally proposed regulations.

- Commenter suggests adding at the end of the subsection *“...or common operational picture.”* [Commenter 4i]

OSPR Response: A common operating picture is a tool that includes maps along with other relevant information for response personnel. Since there is no standardization of common operating picture contents and the requirements described in this objective are specifically stated, the proposed regulations already account for a common operating picture being updated if that is being utilized for the response to house this information. No change will be made to the originally proposed regulations.

Subsections (c)(7); (d)(7), (e)(7)

- “...all tactical resources...” – this tends to be a moving target during initial response. Commenter suggests OSPR reconsider the use of the word “all”. [Commenter 5n.1; 5n.2; 5n.3]

OSPR Response: The current Operations objectives (14 CCR § 820.01 and 820.02) do not mention tactical resources and it has been an ongoing issue that plan holders minimally, or do not, manage their tactical resources; instead relying heavily on their contracted oil spill response organization to do that. Since tactical resources are the foundation of operations, it is vital for those resources to be managed and for the resource providers to work collaboratively to ensure response operations are effectively implemented. OSPR agrees tactical resources are constantly changing, which is why it is so important that they are accounted for and properly managed. No change will be made to the originally proposed regulations.

Subsections (c)(7.1), (d)(7.1)

- *Locate the source of the spill...* This affects scenario design where information is passed to the “discoverer” and OSPR should not withhold credit where design location is part of the kick-off. [Commenter 5o.1; 5o.3]

OSPR Response: To ensure source control is within the scope of the exercise and therefore eligible to be tested and achieved, it is necessary to ensure the scenario does not include source control information or actions at least once during any three-year period. This can be done by simply stating product is being seen in an area and the source is unknown. No change will be made to the originally proposed regulations.

Subsection (c)(7.2)

- Several of these ‘prescriptive ICS form’ requirements appear to be incompletely thought out, i.e., shouldn’t this one additionally allow for documentation of actual spill volume on an ICS 209? [Commenter 4j]

OSPR Response: The ICS requirements identified throughout these proposed regulations have been well discussed during their development, which included points provided by plan holders and lessons learned during exercises and actual spills. The forms identified were done so thoughtfully, and in this case the ICS 209 was not included as a requirement due to plan holder feedback that it is not developed during the early hours of a response when the assessment takes place. Since the ICS 201 is the form utilized during the initial response phase, it is the form required in this objective. No change will be made to the originally proposed regulations.

Subsection (c)(7.3)

- Since pipeline companies and their assets are located near multiple fire stations in multiple counties, would any local station suffice, or would the intent be to call a county or city-wide number? This seems like a remedial notification with no clear purpose other than to test operators’ ability to use a phone to call a station that has a high probability of being out on a call. [Commenter 3A]

OSPR Response: Since pipeline companies and their assets are in multiple counties, there have been ongoing issues with contacts being identified that are not local or relevant to the exercise scenario. Depending on the location of the exercise scenario, the appropriate local fire department may be city, county, or other fire department with jurisdiction. It is necessary to make an actual notification to ensure firefighting contact information is correctly identified in case of an actual emergency, which is especially important when dealing with a flammable substance. No change will be made to the originally proposed regulations.

Subsections (c)(7.4), (d)(7.4)

- “Contact information must be accurate in the oil spill contingency plan.” – this should not be mandatory as a precursor to granting credit. [Commenter 5p.1; 5p.2]

OSPR Response: One purpose of the oil spill contingency plan is to have a response manual that contains information that response personnel will need during an actual spill to facilitate immediate notifications and response actions. Currently, contact information that is identified during exercises to be incorrect is most often not corrected in the oil spill contingency plan, even when the plan holder is directly prompted by OSPR. Requiring the contact information be accurate addresses this issue, ensures accurate information is available in case of an actual spill, and since this objective only needs to be achieved once in any three-year period it is not unreasonable to require contact information be correct to achieve credit. No change will be made to the originally proposed regulations.

Subsection (c)(7.5)

- The intent of the word “implement” is unclear; it appears to imply a deployment at the protected site. Commenter requests verification of that intent. [Commenter 3B]

OSPR Response: These regulations already describe applicability and requirements for equipment deployment drills [14 CCR § 820.1(b)(2)], which are independent of the requirements described in the tabletop exercise objectives. Therefore, an actual equipment deployment is not required to demonstrate implementation. No change will be made to the originally proposed regulations.

- Who determines which sensitive sites are “relevant” (if it is the OSPR Env Unit Leader), then there could potentially be quite a few sensitive sites that need to be accounted for on the ICS 215 during the tactical planning process. It is well understood these are all identified on an ICS 232 and prioritized. However, when reading this new chapter it appears these sensitive sites are not understood they are reflected on an ICS 215 and need to be logistically planned for. This does not give the SMT time to adequately practice planning for these sites in a quality over quantity perspective. Especially if there are 5-15 sites listed on a 232. This does not give planning and operations enough time to produce a matching ICS 215 to account for all resources. From a design and control perspective - all “relevant” protective strategies should be limited relative to what is required to be on the ICS 215. [Commenter 5q]

OSPR Response: As described in this objective, the Environmental Unit identifies the relevant sensitive sites on an ICS 232. There are usually six or less sensitive sites that are identified, but regardless of the number of sites identified it is important that plan holders

practice implementing protective strategies for all those sites to ensure California's natural resources are adequately protected in the event of an actual spill.

The oil spill contingency plan identifies potential sensitive sites that would be impacted by a potential spill. This information would help plan holders determine the scope of work expected of them during an exercise to achieve this objective.

The ICS 215 is an operational planning worksheet that allows users to determine what resources are needed to complete a work assignment. Depending on the sites identified, it may not be necessary for every individual strategy to have a dedicated work assignment, but those assignments are at the discretion of the Operations Section to determine and the Unified Command to approve. This is not an unrealistic expectation for plan holders to test and achieve once in a three-year period.

No change will be made to the originally proposed regulations in direct response to this comment, however, OSPR is changing "relevant" to "identified" to more accurately state the intent. This revision will be noticed to the public for a 15-day comment period.

Subsection (c)(8)

- This isn't possible if the drill's scope ends before a UC meeting. (Commenter referencing requirement to submit plans for UC approval to develop the IAP.) [Commenter 4k]
- Which plans? Is this subjective or objective? [Commenter 5r]

OSPR Response: The requirements within each objective must be met to successfully achieve the objective. Other than Notifications and Staff Mobilization, every objective must be met at least once during any three-year period. One or more objectives may not be applicable to the scope of an exercise based on its design, but if that is the case then credit cannot be earned for those objectives, must be incorporated into the scope of an exercise, and earned another year within three years to be in compliance.

The plans referred to in this objective are not subjective, they are objective. There are myriad types of plans that may be developed during an exercise (e.g., decontamination plan, waste management plan, volunteer plan, community air monitoring plan, etc.). The requirements described in this objective are designed to ensure the Planning Section Chief is fulfilling their role and responsibilities as described in the IMH while maintaining flexibility for the number and types of plans being produced during each exercise.

No change will be made to the originally proposed regulations.

Subsections (c)(8), (d)(8), (e)(8)

- Operational planning cycle: Which meetings are required during an exercise? Is this subjective or objective and are plan holders expected to produce an IAP at each exercise as well as an operational briefing? [Commenter 5s.1; 5s.2; 5s.3]

OSPR Response: There are no specific operational planning cycle meetings that are required by this objective. This allows plan holders flexibility in the scope of the exercise, if the scope allows the requirements described in this objective to be tested and achieved. This requirement is objective and refers to any operational planning cycle meeting(s) within

the scope of the exercise.

This objective does not require the completion of an Incident Action Plan, it requires plans to go through the Unified Command approval process to develop (not complete) an Incident Action Plan. This requirement is designed to ensure plans generated by response personnel go through the Unified Command approval process and are compiled in an Incident Action Plan, which informs response operations for the next operational period. No change will be made to the originally proposed regulations.

Subsection (c)(8.2)

- Commenter suggests the following language revision to allow for other methods of tracking resources: *“Document and regularly update the status and location of all tactical resources using ~~page four of the ICS 201~~ and the organization of all response staff on ~~an ICS 207~~”*. [Commenter 3z]

OSPR Response: OSPR has considered this comment, but requiring these forms addresses ongoing issues with plan holder staff not tracking tactical resources and response personnel. Utilizing and updating page four of the ICS 201 ensures tactical resources are being tracked during the early hours of a response before other methods of resource tracking can be implemented. Utilizing an ICS 207 ensures all response personnel comprising a Unified Command structure, including federal and state agencies, are accurately represented and, per the IMH, is a major responsibility of the Resource Unit Leader. No change will be made to the originally proposed regulations.

- Commenter suggests that “page four of the ICS 201” in this section could be better stated as “~~page four of the ICS 201-4~~”. [Commenter 3C]

OSPR Response: The form number is ICS 201. Page four of the ICS 201 is not identified as “ICS 201-4”; that would imply a different form altogether, which does not exist. No change will be made to the originally proposed regulations.

- Commenter recommends the following language changes: *“Ensure all response personnel sign in to the incident command post using a signin sheet or document digitally, which must include name, company or agency affiliation, incident command system position or section, contact phone number, and email address. Document and regularly update the status and location of all tactical resources using ~~page four of the ICS 201-04~~ and the organization of all response staff on an ICS 207.”* [Commenter 3D]
- *“Ensure all response personnel sign in to the incident command post using a sign-in sheet...”* Plan holders should not be held to 100 percent accuracy since individuals are human and make mistakes. Is this subjective or objective to OSPR drill evaluators?

ICS 207’s are limited (by quantity) of positions, elsewhere in this chapter ALL contractors and agencies are required to be listed. What about positions like assistants, deputies, etc. that are not listed but is being expected and required of planholders. This document does not allow for 100+ personnel to be identified nor altered due to version/revisions requirements. [Commenter 5t.1; 5t.2]

OSPR Response: It is important for a physical copy of the sign-in sheet to exist and include all exercise participants in case of a real emergency where everyone needs to be accounted

for; digital documentation does not satisfy this need so it will not earn credit. It is also important for positions to be included and accurate in case lead personnel (i.e., Section Chiefs, Unit Leaders) need to be easily located to ensure their staff are safe and accounted for, which cannot be accomplished if only a section is listed. This would be particularly important for large exercises where 100 or more participants may be present and need to be safely evacuated and accounted for. With regard to the comment about ICS 201-04, refer to the response to the second bulleted comment above to this subsection. No change will be made to the originally proposed regulations.

The purpose of an ICS 207 is to provide personnel with information on the units that are currently activated and the names of personnel staffing each position/unit. Requiring all response staff be documented on an ICS 207 addresses the ongoing issues of organization charts not incorporating personnel from participating agencies and contractors as well as not being updated as additional personnel are staffed or from previous exercises. This requirement will ensure organization charts are complete and accurate. No change will be made to the originally proposed regulations.

Subsection (c)(8.3)

- WSPA recommends modifying the language in this section to read “...ICS Form 232 – Resources at Risk Summary (U.S. Coast Guard rev. 07/04; U.S. Environmental Protection Agency rev. 05/18), and/or ICS 232a Area Contingency Plan Site Index, ...” [Commenter 3E]

OSPR Response: The ICS 232a is an optional form designed to be a key to the site numbers or site names shown on the Situation Map, it is not meant to take the place of the ICS 232. No change will be made to the originally proposed regulations.

- Commenter questions “Why 4?”, referring to the requirement to develop four trajectories. [Commenter 4I]

OSPR Response: The necessity of four trajectories has already been described in the Initial Statement of Reasons. Developing four trajectories would be adequate to analyze movement caused by the ebb and flood of a single tidal cycle for any applicable marine plan holder, or to visualize the impact of delaying or moving forward with water releases from a dam impacting the spill area for any applicable inland plan holder. No change will be made to the originally proposed regulations.

- Commenter comments that the ICS form 232 is, “Not relevant to ‘Stem of P’ exercises”. [Commenter 4m]

OSPR Response: Since the initial response (‘Stem of P’) only accounts for a fraction of the operational planning cycle, it is not OSPR’s intention to have every objective be achievable during this phase or plan holders would not be held accountable for the roles, responsibilities, and actions required by working through the operational planning cycle. It is not an unrealistic expectation for plan holders to test and achieve this objective once in a three-year period. No change will be made to the originally proposed regulations.

Subsection (c)(8.3.1)

- Commenter requests clarification as to: (1) the need for waste management plans to be approved by UC to receive credit, (2) whether or not templates will be provided, and (3) whether or not templates if provided will be required to be used or will they serve as guidelines for expectations. [Commenter 3F]

OSPR Response: Per the originally proposed regulations, the waste management plan does not need to be UC approved, it must be developed for UC approval. This indicates it is completed after the UC is formed and not during the initial response phase. As with every other requirement described in these regulations, it is the responsibility of the plan holder to achieve. Since no template has been described in these regulations, no template will be provided, and no template is specifically required. Expectations for the plan's development are described in the originally proposed regulations. No change will be made to the originally proposed regulations.

Subsection (c)(8.4)

- Commenter recommends deleting the following language: *“~~During the exercise, all documentation must be provided to the drill coordinator upon request.~~”* There is a concern that requiring documentation to be provided in the midst of an active exercise could prove disruptive and distracting to the personnel participating in the drill. [Commenter 3G]

OSPR Response: Per the IMH, one of the major responsibilities of the Documentation Unit Leader is to provide incident documentation as requested. The requirement to provide documentation to the drill coordinator upon request is not only necessary to address ongoing issues with plan holder staff withholding documentation from drill coordinators but it is also necessary to ensure the Documentation Unit Leader can perform their major responsibilities. No change will be made to the originally proposed regulations.

Subsections (c)(8.4), (d)(8.4)

- Is the requirement to transition to a federal or state agency Document Unit Leader mandatory or optional – where applicable or mandated by law? Is this legally allowed when incidents are not “federalized”? [Commenter 5u.1; 5u.2]

OSPR Response: As stated in the originally proposed regulations, transitioning to a federal or state agency Documentation Unit Leader occurs upon their arrival. This transition occurs so the on-scene coordinator can ensure the necessary collection and safeguarding of information, samples, and reports [40 CFR § 300.315(d); 40 CFR § 300.160]. Therefore, if there is no federal or state agency Documentation Unit Leader at the exercise, then the transition is not applicable. Since this objective includes a federal or state agency Documentation Unit Leader, it does not matter if an actual spill is not “federalized” because the state would still have jurisdiction and this requirement would still be applicable. No change will be made to the originally proposed regulations.

Subsection (c)(8.5)

- Commenter has a similar concern with this section as the concern noted in § 820.1(c)(4) above. The Volunteer Plan is not currently required by federal regulations. The UC would need to formally request the document. Commenter recommends the same language revision as noted in our § 820.1(c)(4) comment. [Commenter 3H]

OSPR Response: Requiring a Volunteer Plan is not in conflict with federal law and a template for this plan is included in the area contingency plans, which are managed by the US Coast Guard. OSPR has attempted to work such issues through the UC, but it is an ongoing issue that plan holders dismiss volunteers as something they would never agree to incorporate and therefore do not need to practice managing. This is not the case, since California's Governor can declare that volunteers will be utilized. Therefore, this requirement is necessary to ensure plan holders have the knowledge and understanding to support volunteer management in case it is needed at an actual spill. No change will be made to the originally proposed regulations.

Subsections (c)(8.5), (d)(8.5)

- The proposed language requires establishment of a volunteer hotline. WSPA recommends deleting this requirement as it creates potential confusion with the existing volunteer hotline the state maintains. Alternatively, the language could be amended to affirmatively refer to the state's established hotline. [Commenter 3I]
- This requirement places an undue hardship on plan holders by requiring an additional costs for procurement of staffed call centers/contracts to activate call centers, etc. [Commenter 5v.1; 5v.2]

OSPR Response: The originally proposed regulations did not reference the state's volunteer hotline, to allow for discussion of alternate hotlines (e.g., county hotline, city hotline). OSPR has considered these comments and determined that the state's hotline would be activated to provide volunteer information regardless of alternate forms of information dissemination. The requirement to establish a hotline will be removed and noticed to the public for a 15-day comment period.

Subsection (c)(9.2)

- Commenter proposes the following revision: "...support of all response personnel including operational space, administrative space, security, an ICS Form 206 – Medical Plan (U.S. Coast Guard rev. 07/04; U.S. Environmental Protection Agency rev. 05/18), incorporated by reference herein, lodging, food services, and transportation where applicable." [Commenter 3J]

OSPR Response: The term "where applicable" has been utilized intentionally in these proposed regulations where there is a defined circumstance for a requirement to be applicable or not. This is not one of those instances and including that term for this requirement would make it subjective as well as allow ongoing issues with plan holders not even considering providing this support to continue. Operational space, administrative space, security, lodging, food services, and transportation always warrant consideration to ensure personnel are being supported; if there is discussion regarding those needs and the

determination is no additional resources are required, then that discussion and determination can be documented for credit. No change will be made to the originally proposed regulations.

Subsection (c)(9.3)

- Commenter recommends adding “as appropriate” after “telecommunication services” from the list of services to be provided. [Commenter 3K]

OSPR Response: It is always necessary to have telecommunication services be available to support oil spill response, so it is necessary for plan holders to ensure these services are provided. For example, providing an incident command post with existing telecommunication services will achieve this requirement. No change will be made to the originally proposed regulations.

- If internet is slow do you fail this objective? [Note by OSPR: Commenter referencing the following requirement: “Ensure that wireless internet is accessible by all response personnel and can support all response activities.”] [Commenter 4n]

OSPR Response: If the internet connection is slow enough that it does not support all response activities at the incident command post then credit cannot be achieved. A clarification regarding the response activities pertaining to those at the incident command post will be made and noticed to the public for a 15-day comment period.

Subsection (c)(10)

- Commenter recommends the following revisions: “...for the current ~~and subsequent~~ operational periods being exercised”. [Commenter 3L]

OSPR Response: Once the initial response phase of the operational planning cycle is complete, the rest of the planning cycle is spent planning for the next operational period. Per the IMH, it is a major responsibility of the Finance Section Chief to manage all financial aspects of an incident; therefore, it is not unreasonable to expect the Finance Section Chief to calculate a burn rate for both the current and following operational periods once in a three-year period. No change will be made to the originally proposed regulations.

- Commenter suggests that “estimate” be used instead of “calculate.” For a drill or exercise that works on a highly accelerated schedule, exact “total” costs and expenses is problematic. [Commenter 3M]

OSPR Response: The term “estimate” denotes that the burn rate can be approximated, or a best guess can be provided to achieve this objective. This is not acceptable during an actual oil spill response and is not acceptable during an exercise. The term “calculate” is utilized in these proposed regulations to indicate there is quantitative data to analyze to determine the burn rate. For example, during an exercise there are resources ordered, response personnel from myriad organizations and agencies, third-party claims, and other costs and expenses that would comprise the burn rate. These costs and expenses have dollar amounts associated with them that can be utilized during an exercise to calculate the burn rate, which is OSPR’s expectation. It is not unreasonable to expect the Finance Section Chief to calculate a burn rate once in a three-year period. No change will be made to the

originally proposed regulations.

Subsections (c)(10), (d)(10)

- Requiring 100 percent accuracy is difficult to ensure from both a QA/QC of the position overseeing this requirement, the evaluators and granting credit. This causes undue hardships on plan holders, evaluators and OSPR to ensure this accuracy, and invariably creates the opportunity for failure and additional unnecessary exercises that will have to be repeated adding to OSPR's workload. [Commenter 5w.1; 5w.2]

OSPR Response: Requiring all resources ordered to be included in the burn rate addresses ongoing issues with plan holder staff not accounting for ordered resources in the burn rate. This results in the burn rate being miscalculated because a potentially large sum of expenses has not been accounted for. It is not unreasonable to expect the Finance Section Chief to incorporate ordered resources into the burn rate once in a three-year period. No change will be made to the originally proposed regulations.

Subsection (c)(12)(A)1.

- Commenter recommends deleting the requirement that a call needs to be placed to verify the number. OSPR reviews the plans for accuracy and should be aware of flaws in the plan. In addition, the 24-hour numbers for NRC, OES and the two largest OSRO's have not changed in more than 10 years. Requiring calls verifying the accuracy of the number further adds to the logjam for call centers. [Commenter 3N]

OSPR Response: The oil spill contingency plan is meant to act as a reference for plan holder staff during actual spills, so OSPR being aware of flaws in the plan does not address the issue that plan holders need to be aware of and correct inaccuracies to ensure it is accurate in case of an actual spill.

The requirement to make actual calls addresses ongoing issues with plan holders not making required notifications during drills, exercises, and actual spills. These 24-hour numbers may not have changed in more than 10 years, but that has not ensured plan holders are making these notifications. For example, in 2021 a major plan holder notified their oil spill response organization, received a case number, and mistook this notification for the California Office of Emergency Services. This requirement increases the practice plan holders will have in making these calls, while "verifying contact information" lessens plan holders' burden with making these notifications by limiting the amount of time they are on the phone as compared to meeting other notification requirements described in these proposed regulations. No change will be made to the originally proposed regulations.

Subsection (d)(3)

- Note by OSPR: The comment marker #4 positioned at subsection (d)(3) reads "same comment as tier 1", but it does not point to anything specifically highlighted. The other two comment markers are identified and addressed. [Commenter 5]

Subsection (d)(4)

- This affects scenario design where information is passed to the "discoverer" and OSPR should not withhold credit where design location is part of the kick-off. [Commenter 5o.2]

OSPR Response: OSPR believes commenter intended this comment to address (d)(7.1), similar to the comment at (c)(7.1). See response at (c)(7.1).

Subsection (d)(8.2)

- Reconsider use of the word "all". Plan holders should not be punished where people have forgotten to sign in. Plan holders should not be withheld this credit item at the risk of accuracy requirements. [Commenter 5x]

OSPR Response: It is the plan holders' responsibility to ensure response personnel are accounted for. This information is utilized in many ways and therefore has many negative impacts if the information is incomplete or inaccurate. It is used to populate a communications plan (ICS Form 205a), calculate personnel costs to inform a burn rate, manage site access and security, and to ensure everyone is accounted for in case of a real emergency. It is not unrealistic for plan holders to ensure all response personnel sign in using a sign in sheet once in a three-year period. No change will be made to the originally proposed regulations.

Subsection (d)(9)

- Is this requirement dependent on Finance being "in play" to earn credit here? When Finance is usually played during regional WCD exercises? Could Logistics still earn this credit during other proactive phase exercises? [Commenter 5y]

OSPR Response: This objective will be eligible for credit during any proactive phase exercise where there is adequate time for the Logistics Section Chief to coordinate with the Resource Unit and Finance section to identify and provide the support described in this objective. The exercise does not need to be a regional worst-case discharge (WCD) exercise to be eligible for credit. No change will be made to the originally proposed regulations.

Subsection (d)(9.3)

- Wifi is difficult to support "all" response activities, especially where satellite phones are the only option. Reconsider use of the word "all". [Commenter 5z]

OSPR Response: OSPR is unsure as to the exact comment. If similar to the comment made at (c)(9.3) regarding all response activities, a clarifying addition will be made and noticed to the public for a 15-day comment period. If this comment refers to an incident command post being established where satellite phones are the only option, no change will be made to the originally proposed regulations. It is important for wireless internet services to support all response activities at the incident command post to ensure there are no avoidable delays in the response. Usually, exercises are held where it is relatively straightforward to ensure adequate wireless internet services. If plan holders wish to test providing these services in a challenging location to enhance preparedness, all the better; but it is not unreasonable to

expect wireless internet services to support all response activities once in a three-year period.

Subsection (e)(7.4)

- This language should be applied to Tier 1, with flexibility to address in the ICS 215 tactical planning process. Relevant is used and tied to the ACP, GRP and invariably the ICS 232 - however in Tier 1 larger responses this flexibility allows the controllers to limit scope of work for an exercise during tactical meetings and development of the sheer number of ICS 204's that would be the output.

“Show the relevant sensitive sites...”. See comment above - with limitations. "Relevant" can be subjective. Who is the decider in this requirement (ENVL, Drill Controllers, Evaluators, etc. [Commenter 5A.1; 5A.2]

OSPR Response: Tier 1 plan holders have the highest reasonable worst-case spill volumes and present the highest risk to California’s natural resources; therefore, they are held to the highest performance standards. Inversely, tier 3 plan holders have the lowest reasonable worst-case spill volumes and present the lowest risk to California’s natural resources. The objectives are designed to test these plan holders commensurate with their reasonable worst-case spill volume. For this objective, tiers 1 and 2 require resources lists and tier 3 does not; this is consistent tiers 1 and 2 having a Resource Unit objective while tier 3 does not. No change will be made to the originally proposed regulations.

As stated in the proposed regulations, the sensitive sites referred to in this objective are identified by the Environmental Unit. A clarification will be made and noticed to the public for a 15-day comment period.

Subsection (e)(9)

- “Logistics Section “ is missing as an objective for Tier III, which should be “(9)”; and Communications Unit should be (9.1). [Commenter 2c]

OSPR Response: OSPR considered including a “Logistics Section” objective for tier III plan holders but determined the pertinent Logistics Section responsibilities were confined to the Communications Unit. This objective is numbered consistent with ICS sections having dedicated objective numbers. No change will be made to the originally proposed regulations.

Subsection (f)

- WSPA requests clarification as to how this requirement plays out for deployments of multiple sites (i.e., done consecutively and not concurrently). [Commenter 30]

OSPR Response: As described in subsection (f) of these proposed regulations, these drills are evaluated on a pass/fail basis. If there are multiple deployment strategies needed to accomplish containment, then consecutive deployments must pass for the drill to pass. No change will be made to the originally proposed regulations.

Subsections (f)(1), (g)(1)

- Control number issuance is outside of the notifiers control and therefore should not be held responsible for providing it. WSPA suggests the following revision: "... control numbers when provided must..." [Commenter 3P.1; 3P.2]

OSPR Response: OSPR considered this comment, but the proposed requirements directly address ongoing issues with notifications and adding "when provided" provides plan holders with flexibility to not receive a control number for reasons other than NRC or OES not providing them. If NRC or OES are too busy to take a full report and provide a control number, for example during a real emergency such as wildfires, that would not negatively impact the plan holder nor the actual response effort by NRC or OES. No change will be made to the originally proposed regulations.

Subsection (f)(2)

- "Plan holder staff" may be interpret as not including OSRO who at times meets AMPD requirements with 24 hour advance notice. [Commenter 2e]
- Plan holder staff may not deploy the boom as boom could be deployed by an OSRO. Commenter suggests that this section this should reference Spill Management Team requirements for Initial and/or Cascading mobilization of staff. [Commenter 3Q]

OSPR Response: The equipment deployment requirements here refer specifically to plan holder-owned equipment and do not pertain to OSROs or spill management teams. The AMPD, average most probable discharge, is a U.S. Coast Guard term and is not applicable to these proposed regulations.

Since there are a few instances where OSRO staff assist plan holder staff during their deployments, an edit will be made and noticed to the public for a 15-day comment period.

Spill management teams are not mobilized to deploy plan holder-owned equipment, they are mobilized to manage a spill response. Since these drills are separate from tabletop exercises, where these spill management teams would be needed, they are not relevant here. No change will be made to the originally proposed regulations in response to this comment.

Subsection (f)(5)

- Mobile Transfer Units fall under Tier III of this draft in 820.1(a)(3)(C), Section 820.1(f) of this draft implies the above is required for mobile transfer units, however they are exempt from 300 feet in 30 minutes per 817.03(d)(4). [Commenter 2d]

OSPR Response: Mobile Transfer Units do not have any on-water containment equipment that would necessitate an equipment deployment pursuant to these regulations. To clarify that equipment deployment requirements do not apply to mobile transfer unit plan holders, they will be added to the exemptions noted in (b)(2) and noticed to the public for a 15-day comment period.

- Commenter suggests replacing “drill initiation” with “drill safety briefing” which eliminates the possibility of putting a drill above good safety policy. [Commenter 3R]

OSPR Response: The term “drill initiation” was utilized to allow for additional safety considerations above-and-beyond a safety briefing; however, OSPR has considered this comment and revised the language for clarity. The change will be noticed to the public for a 15-day comment period.

Subsection (g)

- Note by OSPR: “...must test and successfully achieve the objective described in (2) in this subsection during vessel notifications” is highlighted and the comment is “same comment as tier 1” [Commenter 5B]

OSPR Response: OSPR is unclear as to the comment since subsection (g) pertains to additional notifications and does not have a counterpart in tier I [subsection (c)].

Subsection (g)(1)

- The proposed regulatory language indicates that every plan and every region within a plan complete a notification call out as outlined in the response plan. Commenter requests clarification as to whether the notification is for a Qualified Individual (QI) notification, or rather a notification drill with a full call out. [Commenter 3f]

OSPR Response: A clarifying edit is made at (g)(1), and a reference to it will be added to subsection (b)(3)(A) “Facility Notifications”. These revisions will be noticed to the public for a 15-day comment period.

- Request spill scenario and time limit for quarterly notification drills be removed – it does not demonstrate any different capability on the operators’ ability to make outside notifications. Quarterly Notification Drills should remain a demonstration of ability for the organization to make appropriate notifications while ensuring the notification phone numbers & contacts are still accurate and functional. [Commenter 1c]
- Commenter is concerned with the real potential for an increase in the calls to NRC and Cal OES and the resulting delay in achieving the required 30 minutes... Imposing a quarterly testing requirement on all plan holders will flood the system, especially at the end of each quarter, thus clogging the lines in the case of an actual event. [Commenter 3S]
- The current regulations generally mirror PREP guidance with the addition of notification of the OSRO and the SMT. The proposed regulation requires the Quarterly Notification to be expanded to essentially duplicate the Drill and Exercise Notification Objective, use a scenario, and telephonically notify additional agencies, i.e., CalOES, and NRC. This new requirement is overly burdensome to plan holders as well as to an already overwhelmed NRC, where call backs for non-emergencies can take two hours or more. The provision in the proposed regulations that the Notification Objective of another drill or exercise can count as that Quarter’s Notification Drill does not reduce the magnitude of now requiring the Notification Objective (as well as the Mobilization Objective) at every drill or exercise. The change to the Quarterly Notification Exercise should be eliminated from the proposed regulations. In addition, electronic notification should be allowed in

addition to telephonic notification to the QIs and other relevant personnel. [Commenter 4d]

OSPR Response: Under the current regulations [14 CCR § 820.01 and 820.02], plan holders have not demonstrated the ability to make appropriate notifications in a timely manner, which requires the regulations be updated to ensure best protection of California's natural resources. Plan holders have consistently failed to initiate the required notifications within 30 minutes pursuant to the contingency plan regulations, which is a time limit that has been in regulations for many years [14 CCR § 817.02(g) for marine facility plans; 817.03(g) for small marine fueling facility plans; 818.02(h) for tank vessel plans; 818.03(h) for vessels carrying oil as secondary cargo plans; 817.04(g) for inland facility plans; and 827.02(d) for nontank vessel plans]. Requiring a spill scenario and time limit for quarterly notifications is necessary to ensure plan holders practice making these notifications within the time limit in a way that allows OSPR to evaluate compliance without being present, since quarterly notifications are performed independent of scheduled drills and exercises.

Quarterly notifications are an existing requirement for all plan holders and this requirement has been in regulations for many years [14 CCR § 820.01(a)(1)(B) for marine facility plans; 820.01(a)(2)(B) for tank and nontank vessel plans; 820.01(a)(3)(B) for small marine fueling facility plans; 820.02(b)(1)(B) for tier 1 inland facility plans; 820.02(b)(2)(B) for tier 2 inland facility plans; and 820.02(b)(3)(B) for tier 3 inland facility plans]. Calls to NRC and CalOES have not been required but are commonly made by plan holders during their quarterly notifications, so call volume to these call centers should not be significantly increased. OSPR has considered these comments and determined that increasing the frequency of notifications required during annual tabletop exercises is sufficient to address the ongoing notification issues at this time. Notifications to NRC and CalOES will be removed from the quarterly notification requirement and will be noticed to the public for a 15-day comment period.

OSPR has considered whether forms of notifications other than telephonic should be acceptable for the "immediate notifications" described in the contingency plan regulations [14 CCR § 817.02(g)(2) for marine facility plans; 817.03(g)(2) for small marine fueling facility plans; 818.02(h)(2) for tank vessel plans; 818.03(h)(2) for vessels carrying oil as secondary cargo plans; 817.04(g)(2) for inland facility plans; and 827.02(d)(2) for nontank vessel plans] and required in these proposed regulations. For many years OSPR's regulations have required these notifications be made with a phone, which makes them telephonic. A clarification will be made to the contingency plan regulations and noticed to the public for a 15-day comment period.

- Note by OSPR: "...all phone calls are to be initiated within 30 minutes of spill discovery" is highlighted and the comment is "same comment as tier 1" [Commenter 5C]

OSPR Response: OSPR is unclear as to the comment since subsection (g) pertains to additional notifications and does not have a counterpart in tier 1 [subsection (c)].

Subsection (g)(2)

- Commenter recommends deleting the last sentence. The requirement for contacting NRC, OES and OSRO are already spelled out elsewhere in the regulation. Additionally,

including the term “may contact” adds confusion (i.e., vessels versus facilities).
[Commenter 3T]

OSPR Response: Notifications to NRC, OES, and OSRO are in other locations because they are required as part of other events. As stated in these proposed regulations, subsection (g) pertains to “additional” notifications, meaning they are requirements in addition to the drill and exercise requirements described in this section. The term “may contact” is preserved from vessel plan holder quarterly notification requirements that have been in regulations for many years [14 CCR § 820.01(a)(2)(B)]. It is being retained in these proposed regulations to ensure qualified individuals for vessel plan holders are aware of the additional notifications they may make to practice spill notifications but will not be required to make to achieve the Vessel Notifications objective. Notifications have been included in the proposed regulations for clarity as compared to being referenced as in section 820.01. A clarification will be made and noticed to the public for a 15-day comment period.

Subsection (h)

- This section is unclear on how the implementation would effect existing plans already within the tri-annual cycle of drills and exercises. Would consideration be given to existing plans that are currently approved and are already within a current tri-annual cycle? [Commenter 1d]

OSPR Response: This subsection pertains only to newly approved contingency plans, hence the verbiage specifying the first drill, exercise, or additional notification. All existing plan holders may choose to continue with their current three-year cycle since plan holders will have three years to achieve all the required objectives. A clarification will be made and noticed to the public for a 15-day comment period.

- WSPA suggests that the dates in this section be changed from September 30 to June 30 to allow the plan holder to find a date on the back half of the exercise calendar while also including the 60-day notice period. [Commenter 3V]

OSPR Response: OSPR has considered this comment but does not agree that plan holders with plans approved after June 30th up to September 30th will have a problem scheduling an exercise. Also, this comment would potentially lead to an approved contingency plan not having a tabletop exercise for up to 18 months from the contingency plan being approved. September 30th has been the cutoff date in regulations for inland plan holders for several years [14 CCR § 820.02(c)]. This date allows compliance with the 60-day advanced notice for an annual tabletop exercise pursuant to 14 CCR § 820.1(i), gives new plan holders a minimum of 30 calendar days to choose from when selecting a date to schedule their exercise, and ensures any plan holder with a plan that is approved in the first three quarters of the calendar year are testing their response personnel in case there is an actual spill. If the date is changed to June 30, then new plan holders may be in operation for up to one and a half years before testing their response personnel, which does not allow for best achievable protection of California’s natural resources. No change will be made to the originally proposed regulations.

Subsection (i)(1)

- Does the requirement for 30 calendar days minimum advance notice for drills include QI notification drills? [Commenter 5D]

OSPR Response: There is no “QI notification drill” requirement. If the comment refers to either the facility notifications or vessel notifications, neither of those events are scheduled with OSPR. Only drills and exercises [as defined in subsection (a)(1)] need to be scheduled and therefore require advanced notice [14 CCR § 820.1(i)]. No change will be made to the originally proposed regulations.

- Commenter requests that clarity be added as to what constitutes “inviting” the drill coordinator (i.e., submittal of the prescribed form, a formal standalone communication). [Commenter 3U]

OSPR Response: Subsection (i)(1) of these proposed regulations is meant to include all the information needed to “invite” drill coordinators. A clarification will be made and noticed to the public for a 15-day comment period.

- Note by OSPR: Multiple comments received with regard to citing form dates and revisions are cataloged in the General Comments section beginning on page 42 below.

Subsection (i)(2)(B)

- The amount of extra work created here by limiting plan holders credit due to accuracy of information, and repeated exercises in the event requirements 1 and 2 are not met annually will overburden the system of limitations to two drills and two exercises per region. Has OSPR assessed the total quantity [sic] of plan holders per region and the required quarterly QI notification drills, expected SED's and total Annual TTX as well as repeated exercises in a given year based on a percentage of failures? [Commenter 5E]

OSPR Response: Requiring information be accurate to earn credit is necessary to address ongoing issues with plan holders utilizing the required ICS forms incorrectly or containing inaccurate information and refusing to correct those issues during exercises when directly prompted by OSPR due to accuracy not being required by the regulations.

Drills and exercises are being limited to two each per week per region to distribute OSPR's workload pertaining to evaluating and associated travel over the course of the year. Without this limitation, there are months in the first and third quarters with zero to one drills or exercises per week per region compared with four to five drills or exercises per week in the second and fourth quarters. This limitation also serves to allow plan holders the flexibility to schedule their exercise while ensuring drill coordinators have the time to travel safely.

Due to widespread and chronic issues with notifications, OSPR is anticipating additional makeup exercises will be required while plan holders are addressing these issues. This will limit date availability for drills and annual exercises but limiting makeup exercises to once in a three-year period will help mitigate this impact and ensure makeup exercises don't prevent the scheduling of drills and annual exercises.

Quarterly notifications will not impact the scheduling of drills and exercises since they are performed by the plan holder independent of OSPR and therefore do not require scheduling

or advanced notice. Scheduling only applies to drills and exercises as described in subsection (i) of these proposed regulations and the terms “drills” and “exercises” are defined in subsection (a)(1) of these proposed regulations.

No change will be made to the originally proposed regulations.

Subsection (k)(2)

- *Commenter recommends the following revision: “Where incident command system forms are referenced in this section, all forms must be completed in their entirety (all appropriate fields must be populated)”. [Commenter 3W]*

OSPR Response: Due to the flexibility afforded plan holders in the current regulations (14 CCR § 820.01 and 820.02), ICS forms of varying content and quality have been developed by plan holders and consulting companies. Those myriad versions of ICS forms have been populated during drills, exercises, and actual spills with varying levels of completeness, regardless of whether the information is available or not. Due to ongoing issues with the quality and completeness of forms being populated, there will be no change made to the originally proposed regulations. However, if information is truly not available for response personnel to populate a specific field, it will be acceptable to use “N/A” or “—” to indicate information in that field was sought out and not available. No change will be made to the originally proposed regulations.

Subsection (k)(3)

- *Commenter recommends changing to each CalTriVex. For most “CorVex” drills these are minimal and likely to not generate any lessons learned. [Commenter 3Y]*

OSPR Response: As described in the Initial Statement of Reasons, the vast majority of vessel plan holders have exercises out-of-state and submit documentation from those exercises to substitute for their annual in-state tabletop exercise. This evaluation is not comparable to an in-person evaluation of those vessel plan holders that only do business within California. Since the CoreVEX are meant to eliminate this evaluation discrepancy, the vast majority will still be achieved by hosting a tabletop exercise for another regulatory agency and therefore still generate lessons learned. OSPR requiring less documentation to be submitted for CoreVEX credit does not mean the exercise held to achieve those objectives is so minimal as to not generate any lessons learned; even notifications may yield lessons learned if a phone number is incorrect. No change will be made to the originally proposed regulations.

Subsection (l)(2)

- *The timeline for the drill coordinators to respond to credit requests being increased to 180 calendar days does not provide timely feedback to plan holders in order to prepare/address any areas for improvement prior to the next scheduled drill. [Commenter 1e]*

OSPR Response: The time frame for drill coordinators to respond to credit requests is consistent with the current inland drills and exercises regulations [14 CCR § 820.02(k)(2)(B)] and is only being increased from 90 calendar days to 180 calendar days for marine plan

holders. This adjustment is necessary because no collateral change was made to the marine regulations during the development of 14 CCR § 820.02 to account for the additional workload that came with the expansion of OSPR's regulatory authority to inland environments. This also ensures OSPR can process requests for credit in the order they are received instead of needing to prioritize marine plan holders over inland plan holders to comply with the current regulatory time frame. No change will be made to the originally proposed regulations.

Subsection (l)(3)

- Commenter requests clarification if a plan would be cancelled under the terms of this section: *“The plan holder may have a single makeup exercise within 180 calendar days as long as a makeup exercise has not occurred within the previous two calendar years.”* [Commenter 3Z]

OSPR Response: These proposed regulations do not contain any information or requirements that directly impact the approval of oil spill contingency plans. These regulations ensure the approved oil spill contingency plan is tested and accurate for spill preparedness. No change will be made to the originally proposed regulations.

- Makeup Drills, in addition to the annual drill requirement, especially when the Notification and Mobilization Objectives must be included in every exercise and failed objectives must be encompassed by other objectives, make the Makeup Drill overly complicated and a potentially unnecessary expectation for plan holders. [Commenter 4f]

OSPR Response: Makeup exercises are meant to provide plan holders with an opportunity to remedy issues with noncompliance from their annual tabletop exercise. It is not unreasonable to make and document notifications, assemble initial response personnel, and utilize the oil spill contingency plan at every exercise since they are easily incorporated into any exercise, regardless of its size or scope. Without this opportunity, plan holders would not have a chance to remain in compliance with these proposed regulations in the case of one or more unsuccessful mandatory objectives. No change will be made to the originally proposed regulations.

Subsection (m)(1)(A)

- *“If both the Notifications objective and the Staff Mobilization objective are not successfully achieved, then no other objectives described in (c) through (e) will be considered for credit.”* This places undue hardship on plan holders and OSPR where failure occurs, and restricts plan holders who are compliant to fewer available dates on the calendar due to failed exercises. [Commenter 5F]

*OSPR Response: OSPR believes this commenter misunderstands this proposed regulation. This subsection pertains only to **substitutions** (i.e., unannounced events and actual spills) for an equipment deployment drill or a tabletop exercise. Therefore, if either the Notifications or Staff Mobilization objective is unsuccessful during an OSPRIE, the OSPRIE will not be able to substitute for the annual tabletop exercise and an exercise would still need to be held. However, if during the annual tabletop exercise either the Notifications or Staff Mobilization objective is unsuccessful, then a makeup exercise would be necessary but the*

other objectives tested and achieved would still be credited. No change will be made to the originally proposed regulations.

Section 820.01 – Drills and Exercises (Marine) and Section 820.02 – Drills and Exercises - Inland Facilities

- Note by OSPR: Commenter objects to the proposed repeal of these two sections. Refer to the first comment and response under ‘Comments on Associated Rulemaking Documents’ beginning on page 45 below. [Commenter 4a]

Sections 815.01, 817.02, 817.03, 817.04, 818.02, 818.03, 819.03, 827.02, 830.6

No comments were received on any other sections proposed for amendment.

General or Non-Specific Comments

- While California’s Administrative Procedures Act does not require a pre-rulemaking discussion process...it is regretful OSPR chose not to engage with stakeholders. [Commenter 3a]

OSPR Response: Prior to commencing formal rulemaking, OSPR invited nearly 70 stakeholders to attend two informal scoping sessions that were held virtually in February 2021. Stakeholders included representatives from plan holders of all sizes and regions, state and federal government, response contractors, and the Oil Spill Technical Advisory Committee established by the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act. OSPR accepted and responded to questions and comments during the scoping sessions and, regardless of their attendance, accepted the same via email for those who were interested but unable to attend.

- Commenter recommends that all ICS forms referenced in proposed § 820.1 utilize the current ICS form name “USCG” or “EPA” or equivalent to account for the use of Incident Action Plan (IAP) software (or variations of the forms that industry uses that may not be exactly as developed by the USCG or EPA). These forms include ICS 201, 202, 205, 205a, 206, 207, 208, 209, 213RR, 215, 215a, 230, 232, 233, 234. [Commenter 3b]

OSPR Response: The flexibility of equivalent ICS forms is afforded plan holders in the current regulations (14 CCR § 820.01 and 820.02), which has resulted in myriad versions of varying content and quality to be developed by plan holders and consulting companies. It is necessary to standardize the ICS form requirement to address these issues and ensure all response personnel, regardless of agency or organization, can efficiently communicate vital response information. No change will be made to the originally proposed regulations.

- Notification Requirements - The proposed regulatory language states that all exercises must meet notification requirements and calling out the spill management team at every single exercise (on top of the required quarterly notification drill). This language implies every drill must start at the reactive phase which limits the ability to build on drill programs year-after-year. Thus, it appears to preclude a reactive phase exercise being done one year and then move to a planning phase exercise in subsequent years. Note that it is practice including the reactive phase in larger exercises, but the proposed regulatory language essentially makes this practice mandatory for all exercises.

Commenter requests clarification of this notification requirement. [Commenter 3d]

OSPR Response: Notifications are required at every exercise, but that does not mean that every exercise must start at the reactive phase. If a plan holder would like to start an exercise with the proactive phase instead of the reactive phase, then the exercise design can include notifications being performed by a subset of participants prior to incorporating the remaining participants. No change will be made to the originally proposed regulations.

- Commenter requests that the language throughout the regulation “as described in the USCG or USEPA Incident Management Handbook“, such as in § 820.1(c)(3), be modified to read “as described in the USCG or USEPA Incident Management Handbook or equivalent“. [Commenter 3h.1; 3h.2]

OSPR Response: As described in the Initial Statement of Reasons, the purpose of the incident command system is for everyone involved in a spill or exercise, regardless of affiliation, to speak the same organization language; essentially for all participating agencies and organizations to be reading from the same script. This cannot be, and has not been, accomplished when plan holders are operating to different versions of the IMH due to 14 CCR § 820.01 and 820.02 allowing “equivalent” handbooks be used. OSPR is not mandating the USCG or USEPA IMHs be used, it is simply stating that the information being relied upon must match what is described in the USCG or USEPA IMH. No change will be made to the originally proposed regulations.

Form versions

- The proposed regulatory language as written that cites specific regulatory forms and form revisions may exclude the use of electronic software widely used by government and industry. This limitation could potentially create delays in responding and promptly reporting the response efforts. Additionally, each time forms are updated by USCG or EPA it would necessitate a revision to the regulation. Commenter recommends that OSPR staff investigate this potential system limitation and identify possible solutions. [Commenter 3i.1]
- Sighting [sic] dates or revisions of forms instead of “current” forms is problematic for maintaining regulatory documents. [Note by OSPR: Comment was specifically annotated at (i)(1), but OSPR thinks could apply to use of forms throughout the proposed regulations.] [Commenter 3i.2]
- By requiring specific versions and revision versions, does not allow for flexibility in and during a response. If plan holders are trained to use specific forms, this does not allow for learning and growth in the industry of spill response. Specific versions and revisions should not be required due to changes unforeseen in the future. [Note by OSPR: Comments specifically annotated at (c)(1) and (c)(4.1) but could apply to use of forms throughout the proposed regulations.] [Commenter 5h.1 thru 5h.16]

OSPR Response: The regulations do not exclude use of software, however the product output of the software must match the forms.

The Administrative Procedure Act requires that a document incorporated by reference must specifically and accurately identify the name or title of the document and the date of

publication or issuance in the text of the regulation. [1 CCR § 20] Thus, simply stating “current” document is not permitted. The reason for this is that a future “current” version will not have gone through the public comment process.

The purpose of ICS is for everyone involved in an exercise or actual spill, regardless of affiliation, to speak the same organizational language; this need for standardization extends to ICS forms. Due to the flexibility afforded plan holders in the current regulations [14 CR § 820.01 and 820.02], ICS forms of varying content, layout, and quality have been developed by plan holders and consulting companies. The result of having myriad versions of ICS forms is not having the information on those forms readily available to response personnel, which serves to delay the response. Requiring specific versions of the ICS forms addresses these ongoing issues. As the USCG and US EPA update and make improvements to these forms, it is OSPR’s intention to update its regulations to reflect those changes.

No change will be made to the originally proposed regulations.

Telephonic Communications

- Commenter proposes modification to reflect that assembling the initial response personnel can be accomplished via phone call or other electronic method as identified within the plan holder’s OSCP. Phone calls are not realistic, ignores other best available technology, and would require changes to all existing OSCP’s to list phone notification as the sole method. [Commenter 1b]
- Commenter suggests that additional language be added to this section to allow for an alternate alerting system that allows for responses back. [Commenter 3o]
- This requirement is limiting where plan holders may have Mass Notification System (MNS) broadcasts messages to inform employees which are automated similar to local law enforcement services that broadcast emergencies to the public. Wouldn’t this be beneficial and allowed for SMT notifications to ensure all employees are notified in a timely manner and to be on call and ready for activation? [Commenter 5b.1]
- Actual telephonic notifications does not allow for creative Mass Notification Systems to be deployed for exercises and responses. These types of technologies are beneficial and local law enforcement leverage these technologies for good use. By requiring all SMT personnel are called individually by phone DELAYS a response. [Commenter 5b.2; 5b.4; 5b.5; 5b.6]
- By requiring mandatory telephonic notifications, this would set plan holders who utilize MNS (mass notification systems) back and delay notifications, delay response, and delay successful documentation and completion of this task. [Commenter 5b.3; 5b.4; 5b.5; 5b.6]

OSPR Response: The purpose of drills and exercises is to test the information contained in the approved oil spill contingency plan to ensure the information is accurate to rely upon in case of an actual spill. OSPR has considered whether forms of notifications other than telephonic should be acceptable for the “immediate notifications” described in the contingency plan regulations. Since the contingency plan regulations state “phone numbers [are] necessary to complete the immediate notification procedures” [14 CCR §

817.02(g)(2)(C), 817.03(g)(2)(C), 818.02(h)(2)(C), 818.03(h)(2)(C), 817.04(g)(4), and 827.02(d)(2)(C)], OSPR has determined telephonic notifications for these proposed regulations are consistent with the contingency plan regulations. Plan holders are not prohibited from utilizing mass notification systems to make other notifications, they are simply not to be utilized for the immediate notifications identified in the contingency plan regulations and tested in these proposed regulations. A clarifying addition will be made to the contingency plan regulations and noticed to the public for a 15-day comment period.

Under current regulations (14 CCR § 820.01 and 820.02) notifying the spill management team meant notifying multiple members of staff to assemble and respond to an actual spill; this is when mass notification systems and other electronic methods would be beneficial in quickly assembling a spill management team. Recently adopted regulations for spill management team certification (14 CCR § 830.1 through 830.11) require the certified spill management team have a single contact name, including their mailing address, phone number, and email as identified on their application form (DFW1005 or DFW 1006). To be consistent with the spill management team certification regulations, these proposed regulations (14 CCR § 820.1) are requiring the certified spill management team be notified, meaning the individual identified on their application form; since notification via mailing address or email is not adequate or timely for emergency response, a telephonic notification is required.

No change will be made to these proposed regulations.

Comments on Associated Rulemaking Documents

Initial Statement of Reasons

- Commenter questions the benefits and results of the proposed regulations identified in the Initial Statement of Reasons. It is appropriate for marine and inland drill and exercise regulations to continue to exist separately. Any 'benefit' or 'harmony' achieved by merging the regulations appears to be mainly for administrative purposes as they make plan holder compliance with the proposed regulations more complex. [Commenter 4a]

OSPR Response: OSPR is unsure what the comment refers to since there are no examples of what it questions, only a vague statement. The comment also lacks a reason why the commenter believes it is appropriate for marine and inland drill and exercise regulations to continue to exist separately.

OSPR supports the Initial Statement of Reasons as well as these proposed regulations, which serve to streamline, remove subjectivity and vagueness, provide clarity, standardize language and consistency, and integrate lessons learned from evaluating drills and exercises. OSPR has considered the differences in oil spill response requirements between marine and inland environments and those differences have been accounted for in these proposed regulations. These proposed regulations also allow marine and inland plan holders to be held to the same standards for tiers that have been comparably determined as compared to current regulations (14 CCR § 820.01 and 820.02).

No change will be made to these proposed regulations nor the Initial Statement of Reasons.

- Several [of the results anticipated by OSPR] may be unachievable without fundamental changes in the regulations or its underlying approach. For example: [Commenter 4b]
 - The goal of “*streamlining*” exercise regulations in California should acknowledge that most plan holders currently follow National Preparedness for Response Exercise Program (PREP) drill and exercise protocols.
 - The goal of “*consistency*” eliminates any acknowledgement of the inherent differences between the marine and inland environments.
 - The “*improved clarity*” found in the draft rule effectively adds prescriptiveness or artificialities to drill play.
 - The draft rules are absent redline/strikeout changes or even a table of contents – making discernment of OSPR’s proposed changes and navigation of the rule an unnecessarily difficult undertaking.
 - “*Lessons learned*” invariably varies from industry to industry, or more precisely from marine plan holder to inland plan holder and should be addressed on an individual basis.

OSPR Response:

- *OSPR has included mention of the National Preparedness for Response Exercise Program (PREP) guidelines in the Initial Statement of Reasons; however, PREP serves as guidelines without specific requirements and the state is not precluded from specifying requirements if they are not in conflict, which OSPR has done for many years [14 CCR § 820.01 and 820.02].*
- *The inherent differences between marine and inland environments have been considered while developing these proposed regulations. When there is a requirement that differs between the two environments, the term that acts as the umbrella term for both environments has been used to allow both marine and inland plan holders to achieve the requirement.*
- *These proposed regulations serve to harmonize the current drills and exercises regulations (14 CCR § 820.01 and 820.02) because the difference in organizational structure between the two sections was not conducive to editing either section with the changes. Since 14 CCR § 820.1 is a new section, there is no existing text to redline/strikeout.*
- *OSPR acknowledges that “lessons learned” varies from plan holder to plan holder and even from one exercise to another, which is why they are simply referred to as “lessons learned” without any specifics as to the content of those lessons.*

No change will be made to these proposed regulations nor the Initial Statement of Reasons.

- Any plan holder(s) struggling to effectively exercise Notification and/or Mobilization objectives should be addressed by OSRP [sic.] individually. [Note by OSPR: OSPR believes commenter is addressing the purpose and necessity provided in the Initial Statement of Reasons for subsection (c) of section 820.1] [Commenter 4c.2]

OSPR Response: Due to the widespread, chronic, and worsening issue of plan holders not achieving notifications, it is necessary to increase plan holder accountability statewide to ensure best achievable protection for California’s natural resources. For years OSPR has

provided information and coaching to both marine and inland plan holders, including for unsuccessful notifications (now found in both the Notifications and Staff Mobilization objectives). Notifications are the foundation of oil spill response because agencies and organizations cannot deploy staff and resources to support the response until they are notified. Individual plan holders that chronically fail the Notifications objective are not able to be held accountable under current regulations (14 CCR § 820.01 and 820.02) because the Notifications objective only needs to be achieved once in a three-year period and if they fail that objective when it is mandatory then they have a makeup exercise to test and achieve the mandatory objective to remain in compliance, or receive a penalty. Requiring plan holders to achieve notification once over three years and up to four attempts does not offer best achievable protection for California’s natural resources. No change will be made to these proposed regulations nor the Initial Statement of Reasons.

No comments were received from the 45-day comment period relevant to the following:

- Drills and Exercises Notification form DFW 1954
- Drills and Exercises Credit Request form DFW 1955
- Economic and Fiscal Impact Statement (STD 399) or attachment

Second Comment Period

After consideration of the comments received from the 45-day comment period, OSPR made revisions to the proposed regulations and noticed the public with a 15-day comment period from June 25, 2022 through July 11, 2022. The following consist of comments received from that comment period.

Section 820.1 – Drills and Exercises – Facilities, Vessels, and Mobile Transfer Units

Subsection (c)(7)

- Form ICS 201 is an initial response document. For a proactive phase exercise, depending on the design, IC 201 may not be used at all. Commenter suggests the following language modification: *“Provide an updated list of available tactical resources, their location, deployment time frames, and operational actions. ~~This information must remain updated on the ICS 201.~~ Location of tactical resources must be displayed updated on and relevant a maps and remain updated. and/or through Resource and Situations Units.”* [Commenter 8c]

OSPR Response: The ICS 201 is an initial response document, but it also acts as the incident action plan through the first proactive phase of the operational planning cycle until an actual incident action plan is generated and approved by the Unified Command. This makes the ICS 201 the appropriate form to document and track tactical resources. Additionally, providing an updated list does not ensure that tactical resources are being properly accounted for by the Operations Section since there is no connection between an updated list and the original list, which the verbiage “remain updated on the ICS 201” accomplishes.

Displaying an updated map is necessary to ensure all response personnel are briefed as to

the tactical resources that are actively responding. Without the requirement to display the map, it could be sitting on someone's desk without anyone else knowing about it, which does a disservice to the response.

The objectives were developed to adequately test response capability of the incident command system section or unit as independently of other sections and units as possible to allow plan holders flexibility with the exercise design necessary to test and achieve the objectives. There are a few cases where major responsibilities, as described in the Incident Management Handbook, require another section or unit to participate concurrently to adequately test response capability; however, Operations Section is not one of those sections. No change will be made to the proposed regulations.

Subsection (c)(7.5)

- Commenter requests clarification under the Tier 1 Protective Strategies objective, regarding the 'resources list'. Previously an ICS 209 and/or ICS 215 has been utilized to properly document resources. It is unclear in this proposed change, if a 209 or 215 will continue to be the proper documentation for resources under the current generic language. [Commenter 6c]

OSPR Response: An ICS form has not been identified to act as a resources list in this objective, so there is not a specific ICS form that will be required for credit. However, an ICS 209 (incident status summary) and ICS 215 (operational planning worksheet) do not operate as resources lists. The purpose of an ICS 209 is to summarize incident information for dissemination and the purpose of an ICS 215 is to determine what resources are required, on-hand, and needed to support each work assignment necessary to achieve the Unified Command's tactical objectives.

A resources list is as its name states, a list of resources, such as page four of an ICS 201 (incident briefing), a list of resources provided by a plan holder's rated oil spill response organization, or similar as long as it accurately reflects the most up to date tactical information. No change will be made to the proposed regulations.

Subsection (f)(5)

- Commenter supports the 15-day regulatory language change made for this section. This change eliminates the possibility of putting a drill above good safety policy. [Commenter 8g]

OSPR Response: OSPR appreciates the positive feedback.

Subsection (g)(1)

- Commenter requests that the spill scenario requirement for Facility Notification drills be removed from this section...it does not demonstrate any additional capability in the operators' ability to make outside notifications in a timely manner. Facility Notification Drills should remain a demonstration of ability for the organization to make appropriate notifications while ensuring the notification phone numbers & contacts are still accurate and functional. [Commenter 6d]

OSPR Response: Under the current regulations (14 CCR § 820.01 and 820.02), plan

holders have not demonstrated the ability to make appropriate notifications in a timely manner, which requires the regulations be updated to ensure best protection of California's natural resources. Plan holders have consistently failed to initiate the required notifications within 30 minutes pursuant to the contingency plan regulations, which is a time limit that has been in regulations for many years [14 CCR § 817.02(g) for marine facility plans, 817.03(g) for small marine fueling facility plans, 818.02(h) for tank vessel plans, 818.03(h) for vessels carrying oil as secondary cargo plans, 817.04(g) for inland facility plans, and 827.02(d) for nontank vessel plans]. Requiring a spill scenario and time limit for facility notifications is necessary to ensure plan holders practice making these notifications within the time limit in a way that allows OSPR to evaluate compliance without being present, since quarterly notifications are performed independent of scheduled drills and exercises. No change will be made to the proposed regulations.

Subsection (h)

- This section is unclear on how the implementation would affect existing approved plans within the tri-annual cycle of drills and exercises. How will consideration be given to existing plans that are currently approved and are already within a current tri-annual cycle? [Commenter 6g]

OSPR Response: As stated in the first sentence of these proposed regulations, this subsection pertains only to new plan holders and does not pertain to any existing plan holders. Consequently, this subsection has no effect on existing plans that are currently approved. There are no additional considerations for existing plan holders since exercise requirements are described in subsections (c), (d), and (e). No change will be made to the proposed regulations.

[Sections 815.01, 817.02, 817.03, 817.04, 818.02, 818.03, 819.03, 827.02, 830.6](#)

No comments were received from the second comment period on any other sections proposed for amendment.

General or Non-Specific Comments

- Commenter is disappointed in the lack of feedback [from OSPR] as key issues identified in our March 21, 2022 commenter letter have gone unaddressed in the 15-day regulatory language revision. Commenter suggests that OSPR continue past practices and conduct stakeholder meetings as necessary to address concerns of stakeholders and potentially improve the proposed regulatory language in advance of submitting final language to OAL. [Commenter 8a]

OSPR Response: OSPR is unsure why this commenter has submitted this comment since a meeting between the commenter, its members, and OSPR was scheduled and held on April 29th to discuss concerns relating to these proposed regulations. This discussion included changes that were being made in response to their comments as well as the reasoning behind some comments that did not result in a change. OSPR has also fielded other meetings, calls, and discussions with stakeholders regarding public comments since the 45-day comment period closed. OSPR also generated an addendum to the initial statement of reasons identifying all the changes that were made and noticed to the public for a 15-day

comment period, including identifying the changes that were made in response to public comments received during the 45-day comment period. That addendum was included with the 15-day comment period and available to the public to review.

Untimely Comments

The following comments are considered untimely because they were not received within the applicable comment period. As such, OSPR summarily rejects these comments.

- The draft regulations require use of specific versions of ICS forms. While the information found on the referenced forms is critical in a drill or response, the actual forms referenced are antiquated and not compatible with current technologies. For example, the USCG version of the ICS 201 referenced in the proposed regulations is 9 years old and not a fillable form. As such, use of ICS software to generate an ICS 201 would not be possible because the generated form would not be the actual specific version referenced in regulation. For instance, attached is the ICS 202 from our large-scale exercise in Long Beach in 2021 side by side with the ICS 202 incorporated in the draft regulations. Because the ICS 202 we used is not the actual version referenced in the regulations (ICS Form 202 – Incident Objectives (U.S. Coast Guard rev. 04/04)), we are concerned that would not be given credit in the future for the objective that requires use of the ICS 202, if we were to continue to use our current ICS software solution. The regulations should be revised to allow for flexibility to ensure that forms generated by ICS software solutions are acceptable so long as the produced forms contain the required data found in the referenced forms. [Commenter 7a]

Section 820.1 – Drills and Exercises – Facilities, Vessels, and Mobile Transfer Units

- Subsections (c)(1), (e)(1), (f) – Equipment Deployment Drills - Notifications. CRC proposes a modification for this section to reflect, the **sequence** of notifications is to be **initiated** within 30 minutes of the scenario being briefed. [Commenter 6a]
- Subsections (c)(2), (e)(2) – Staff Mobilization. CRC requests a modification to this section to reflect that assembling the initial response personnel can be accomplished via phone call, or other electronic communication method as identified within the plan holders OSCP. [Commenter 6b]
- Subsection (c)(6) – As this section is regarding a tabletop exercise, WSPA suggests that it is appropriate for accuracy to [make the following addition]: “...and initiate simulated contact with relevant stakeholders.” [Commenter 8b]
- Subsection (c)(7.5) – In previous WSPA comments, we indicated it was unclear as the intent of the word “*implement*”. While the word appears to imply a deployment, it is understood that this is an exercise simulation requirement since there is a separate section for equipment deployment at the protected site. WSPA request verification of that intent. [Commenter 8d]
- Subsection (c)(1) – WSPA suggests that the word “*estimate*” be used instead of the word “*calculate*.” For a drill or exercise that works on a highly accelerated schedule, providing exact “total costs and expenses” are problematic, especially when tracking costs during

the early part of a response where actions are fluid and changing based on the incident and more resources are mobilized and reporting requirements are established. WSPA believes that this simple language change would be particularly useful in verifying OSPR's recognition that costs and expenses are fluid and changing during a response (which the section as written fails to do). [Commenter 8e]

- Subsection (d)(3.1) – Form ICS 202 for the USCG and USEPA, however, do not call out critical information requirements (CIRs) specifically. WSPA suggests that OSPR identify in the regulation where on these forms the documentation of CIRs should be provided by form users. [Commenter 8f]
- Subsection (k)(2) – CRC requests consideration for a language change to the requirement that all ICS forms **must be fully populated** for exercise credit. This may not be feasible based on the drill design to meet required objectives for the drill. [Commenter 6e]
- Subsection (k)(2) – CRC requests clarification if OSPR will accept forms with blank portions for items that did not apply to the drill or scenario. [Commenter 6f]
- Subsection (l) – The timeline for the drill coordinators to respond to credit requests being increased to 180 calendar days. This extension calendar days will impact operators ability to close out exercises and schedule for the upcoming calendar year. Additionally, this change will not allow for timely feedback to plan holders in order to prepare/address any areas for improvement prior to the next scheduled drill cycle. [Commenter 6h]
- Note by OSPR: Commenter 8 provides an attachment to their comment letter which reiterates comments made during 45-day comment period. All comments in the attachment are thus considered untimely for this 15-day comment period.

Third Comment Period

OAL informed OSPR that an additional 15-day comment period was required in this rulemaking action to notice the changes approved in a separate rulemaking (OAL Matter No.2022-0525-04SR) on July 5, 2022, and effective October 1, 2022, that included changes to a few of the same sections. Accordingly, OSPR noticed the public with an additional 15-day public comment period starting July 28, 2022 and ending August 11, 2022. OSPR did not receive any comments during this third comment period.